DIGEST
OF
CASES NOT CONTAINED
IN THE
LAW REPORTS
1882

ALFRED EMDEN.

A Digest

OF ALL REPORTED

CASES NOT CONTAINED

IN THE

"LAW REPORTS,"

DECIDED BY

THE HOUSE OF LORDS AND PRIVY COUNCIL,
THE COURT OF APPEAL,
THE SEVERAL DIVISIONS OF THE HIGH COURT OF JUSTICE,
THE COURT OF BANKRUPTCY,
THE COURT FOR CROWN CASES RESERVED,
THE ELECTION PETITION JUDGES, ETC.,

TOGETHER WITH

A FULL SELECTION OF ALL DECISIONS OF IMPORTANCE

FROM THE

IRISH AND SCOTCH REPORTS,

AND

REFERENCES TO THE AMERICAN REPORTS OF STANDING;

AND ALSO

A TABLE OF CASES FOLLOWED, OVERRULED, OR SPECIALLY CONSIDERED,

AND

A COMPLETE INDEX TO EVERY REPORTED CASE.

FOR THE YEAR 1882.

BY

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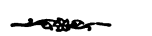

THIS Digest comprises every case which is not contained in the LAW REPORTS, from the following ENGLISH Reports:—The Law Journal, the Law Times, the Weekly Reporter, Aspinall's Maritime Law Cases, O'Malley and Hardcastle's Election Petition Reports, Coltman's Registration Cases, Cox's Criminal Cases, the Justice of the Peace, and Neville and Macnamara's Railway Cases. Subscribers to the LAW REPORTS thus obtain a complete record of all decisions during the period corresponding with the year's reports.

In addition, all decisions of interest to the English Lawyer reported in the IRISH Law Reports are included in the Digest. So also with the SCOTCH cases reported in the Court of Session and Justiciary Reports. Of some of the less important Scotch cases a reference has only been made to the subject-matter of the decision.

References also are given to the subject-matter of all AMERICAN decisions which are likely to be of use or of general interest, from "Otto's Reports" of the Supreme Court of the United States, and the "American Reports" of decisions in Courts of last resort in the several States.

The above method of referring to the American and some of the Scotch decisions affords a means of incorporating many cases which otherwise it would be necessary to omit for want of space, and it will, it is thought, be sufficient for the guidance of the practitioner to the Reports.

The Index to the Cases for the year is complete, and contains the names of, and all the references to, every English decision whether reported in the Law Reports or elsewhere.

N.B.—A list of cases contained in the Digest for 1881 which have since been heard on appeal is given, so that they may be there noted.

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Otto	„	OTTO'S REPORTS OF THE SUPREME COURT OF THE UNITED STATES.
P. C.	„	PRIVY COUNCIL.
P. D.	„	PROBATE DIVISION (LAW REPORTS.)
Q. B. D.	„	QUEEN'S BENCH DIVISION (LAW REPORTS).
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Baker, Re; Collins *v.* Rhodes. Re Seaman; Rhodes *v.* Wish	138	20 Ch. D. 230	Reversed.
Briggs *v.* Massey	138	51 L. J. Q. B. 447; 46 L. T. 354; 30 W. R. 325.	Reversed.
Fletcher *v.* Fletcher	94	9 L. R. Ir. 301	Affirmed.
Inglis *v.* Shotts Iron Co.	84	7 App. Cas. 518	Affirmed, with a variation.
Jackson, Re. Biscoe *v.* Jackson ..	25	51 L. J. Ch. 464; 46 L. T. 355.	Partly reversed.
Mersey Docks and Harbour Board *v.* Lucas	121	51 L. J. Q. B. 114; 46 J. P. 388.	Reversed.
Roberts *v.* Richards	145	51 L. J. Ch. 944	Order discharged on Defendant's undertaking.
"Skandinav," The	127	51 L. J. P. D. A. 93	Reversed.
Tanqueray-Willaume & Landau, Re ..	141; 151	20 Ch. D. 465	Reversed.
Taylor's Estate, Re. Tomlin *v.* Underhay	156	W. N. 1882, 181	Affirmed.
Walker's Trustees *v.* Caledonian Railway Co.	116	7 App. Cas. 259	Affirmed.

TABLE OF CASES,

IN THE DIGEST FOR 1881, WHICH HAVE SINCE BEEN REPORTED IN THE "LAW REPORTS."

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Baker, Re; Collins *v.* Rhodes. Re Seaman; Rhodes *v.* Wish	138	20 Ch. D. 230
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Walker's Trustees *v.* Caledonian Railway Co.	116	7 App. Cas. 259

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ACT OF GOD—Non-performance of contract—Small-pox.
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—— Sudden rainfall—Bed of railway undermined by.
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ACTION—Conduct of—Consolidated actions.
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ADMINISTRATION.
See ADMINISTRATOR; EXECUTOR — ACTION; EXECUTOR—ADMINISTRATION.

ADMINISTRATOR—*Administration* pendente lite *—Bond—Surety—Guarantee Society.*] The Court, in accepting a guarantee society as the surety to an administration bond, ordered the insertion in the bond of a clause limiting the liability to the society's stock and funds, in conformity with the rules constituting the society. STOKES, IN THE GOODS OF - - - - **46 J. P. 663**

2. —— *Costs of Contentious Proceedings — Jurisdiction of Probate and Chancery Divisions—Priority—Personal Assets.*] Though the jurisdiction of the Probate Division extends to directing payment of the costs of litigation in that Division out of the deceased's personalty, the Chancery Division has jurisdiction in the admi-

ADMINISTRATOR—*continued.*

nistration of assets to regulate the order and priority of payment of such costs.

Where a contest for priority arose between pecuniary legatees and parties to whom the Probate Division had awarded costs, to be paid out of the assets, upon the personal estate proving insufficient for the discharge of both costs and legacies:—*Held*, that the costs awarded by the Probate Division should be paid in priority to the legacies.

Semble, that creditors' claims would not be postponed to costs of contentious litigation between next-of-kin or legatees. GILLOOLY *v.* PLUNKETT - - - **9 L. R. Ir. 324**

3. —— *Intestacy — Insolvent Estate—Grant to Trustee of Marriage Settlement—Court of Probate Act*, 1857 (20 & 21 *Vict. c.* 77), *s.* 73.] A., an intestate, died leaving his estate insolvent, the only valuable asset being an interest in a mortgage of property in Ceylon, which he had conveyed to the trustees of his marriage settlement, one of whom was B., his brother-in-law. A. was a widower, and left five children, two of full age. The two adult children had renounced administration. The Court, on a renunciation by the eldest son on behalf of the minor children, who had appointed him their guardian for the purpose, granted administration to B. IN THE GOODS OF TYNDALL **51 L. J. P. D. & A. 12; 30 W. R. 231; [46 J. P. 169**

4. —— *Liability — Misapplication of Dividends of Share of Infant Next-of-Kin by Administrator's Solicitor—Rate of Interest payable by Administrator.*] The administratrix of an intestate set aside certain securities belonging to the intestate's estate, as representing the interest therein of an infant next-of-kin. She allowed her solicitor to receive the dividends of such securities, and he employed them for his own purposes. The capital having already been repaid to the beneficiary:—*Held*, that, inasmuch as the administratrix had not herself derived any benefit from the funds in question, and the right course for her to have followed was to have directed the dividends to be paid into a bank and invested, when received, in consols, she must pay over to the next-of-kin the dividends which had accrued,

ADMINISTRATOR—*continued.*

together with compound interest thereon at 3 per cent. to be calculated with half-yearly rests.

Att.-Gen. v. *Alford* (4 De G. M. & G. 843) applied. GILROY *v.* STEPHEN (*or* STEPHENS)

[51 L. J. Ch. 834; 46 L. T. 761; 30 W. R. 745

5. —— *Lunacy of Widow—Grant to Daughter.*] An intestate's widow being confined in a lunatic asylum in the colonies, administration was allowed by the Court to be granted to a daughter of the intestate without citing the widow. JAMESON, IN THE GOODS OF - - - - **46 J. P. 40**

6. —— *Two Wills—Administration* c. t. a. *as to one revoked—Administration* c. t. a. *granted as to both.*] A married woman, the absolute owner of property and the donee of a power to appoint a fund to the children of her marriage, appointed the fund, by her will, in favour of five of the children, among them B., and made her husband residuary legatee and executor. She afterwards made a second will disposing of her own property without referring to her power, and appointing B. residuary legatee. On her death administration *c. t. a.* was granted to B. by a District Registry without referring to the first will. The husband survived his wife, and died without having proved the first will, but having appointed B. executor, who obtained probate. The Court, on the application of B., revoked the administration with the second will, and granted him administration with both wills annexed. *In re* BLAND **[9 L. R. Ir. 53**

—— Bankruptcy of — Costs of administration action.
See PRACTICE—COSTS. 1.

ADMIRALTY—Jurisdiction—Collision in a dock.
See JURISDICTION.

—— Practice.
See PRACTICE—ADMIRALTY.

ADMISSIONS IN PLEADINGS—Motion for judgment on.
See PRACTICE—MOTION FOR JUDGMENT. 1.

ADULTERY — Divorce petition — Collusion — Fraud.
See HUSBAND AND WIFE—DIVORCE. 1.

ADVANCEMENT—Discretionary power of—Gift to "vest" at specified age.
See WILL—CONSTRUCTION. 30.

—— Power of — Discretion of trustee — Interference with.
See WILL—CONSTRUCTION. 1.

—— Satisfaction *pro tanto*—Share of trust fund.
See TRUSTEE. 7.

ADVERTISEMENT—Representation by—Money-lending.
See MISREPRESENTATION.

ADVICE OF COURT.
See PRACTICE—ADVICE OF COURT.

AFFIDAVIT—Bill of sale—Execution and attestation.
See BILL OF SALE. 4.

—— Of documents—Sufficiency of.
See PRACTICE—DISCOVERY—DOCUMENTS. 1.

—— Removal from file.
See EVIDENCE. 2.

AFFIDAVIT—*continued.*

—— To supplement information.
See JUSTICE OF THE PEACE. 3.

—— Winding-up petition—Statement as to belief.
See COMPANY—WINDING-UP. 1.

AFFIDAVIT OF DOCUMENTS.
See PRACTICE—DISCOVERY—DOCUMENTS.

AFFIRMATION—Person not qualified to affirm—Deposition under a commission.
See EVIDENCE. 3.

AFTER-ACQUIRED PROPERTY—Assignment of —"Growing crops."
See BILL OF SALE. 1.

AGENT.
See PRINCIPAL AND AGENT.

AGREEMENT.
See CONTRACT.

AIR.
See LIGHT AND AIR.

ALIMONY—Judicial separation—Wife's debts—Husband's liability.
See HUSBAND AND WIFE—CONTRACTS BETWEEN. 1.

—— Petition for, *pend. lite*—Costs—Security for.
See PRACTICE—DIVORCE. 1.

ALTERATION—Bill of exchange.
See BILL OF EXCHANGE. 3, 4.

—— Certificate of Chief Clerk.
See PRACTICE—CHIEF CLERK'S CERTIFICATE.

—— Negotiable instrument—Time of alteration.
See EVIDENCE. 7.

AMBIGUITY—Bill of exchange—Extrinsic evidence.
See BILL OF EXCHANGE. 5.

—— Latent—Parol evidence—Misdescription of legatee.
See WILL—CONSTRUCTION. 18, 20.

AMENDMENT—Chief Clerk's certificate.
See PRACTICE—CHIEF CLERK'S CERTIFICATE.

—— Winding-up petition—Name of company.
See COMPANY—WINDING-UP. 15.

ANCIENT LIGHTS.
See LIGHT AND AIR. 1, 2.

ANIMAL—Dangerous—Liability of owner.
See DANGEROUS ANIMAL.

—— "Restiveness or fear" of—Injury caused by.
See CARRIER—GOODS. 3.

ANNUITY—Charged on realty and personalty—Time of vesting.
See WILL—CONSTRUCTION. 30.

—— Charged on realty being administered by Court.
See CONVEYANCING ACT. 2.

—— Gift of, by will—Life or perpetual.
See WILL—CONSTRUCTION. 17.

APPEAL.
See PRACTICE—APPEAL.

APPOINTMENT, POWER OF.
See POWER OF APPOINTMENT.

APPROPRIATION OF PAYMENTS—Direction to carry on trade—Debt due at testator's death.
See WILL—CONSTRUCTION. 11.

APPURTENANCES—Devise of messuage and.
See WILL—CONSTRUCTION. 22.

ARBITRATION—Award, corrupt—Arbitrator not liable in action for damages for. JONES *v.* BROWN **[37 Amer. R. 185 (U.S.)**

2. —— *Award — Setting aside — Umpire not disinterested — Delay — Waiver.*] Y., the arbitrator for the claimants in an arbitration under the Lands Clauses Act, 1845, selected W. to act as umpire from the names of three persons submitted to him by R. the Respondents' arbitrator. On the 11th October, 1881, the parties went before the umpire. On the 22nd November the award was made, and on the 10th December it was taken up by the Respondents and served upon the claimants. W. had given evidence on behalf of the Respondents on the 3rd and 30th November, respecting the value of other property in the same neighbourhood, on claims made against the Respondents.

Y. saw in the newspapers that W. was giving evidence in the other cases, and on the 11th October, when the arbitrators and umpire went to view the premises, he had noticed that R. shewed W. other property in the same neighbourhood, but he did not know at the time he selected W. to act as umpire, that he was about to be retained by the Respondents to give evidence in other and similar cases. Until the 20th December no objection was made by the claimants, or any one on their behalf, that W. was not a disinterested person:—*Held*, that the claimants had sufficient knowledge of W.'s position before the award was made, and, as they gave no notice of objection until the 20th December, they must be taken to have consented to W. acting as umpire.

Per Stephen, J.: Had the objection been taken in time it would have been a very proper one. *Re* CLOUT AND METROPOLITAN AND DISTRICT RAILWAYS COS. - - - - **46 L. T. 141**

3. —— *"Costs of Reference" — Costs of Award.*] An arbitrator authorized by the agreement for submission to deal with the "costs of the reference" has authority to deal with the costs of the award. *Re* WALKER *and* BROWN **[51 L. J. Q. B. 424**

4. —— *Time for Reference limited—Common Law Procedure Act*, 1854 (17 & 18 *Vict. c.* 125), *s.* 11—*Partnership*] Where the articles of a partnership provide for a reference to arbitration of partnership disputes, and that such reference is to be made within a certain time after such a dispute; and various disputes have at different times arisen, and, after the time has expired as to all the disputes except one, one of the partners has required a reference of the disputed matters, the Court will, exercising its discretion, refuse to separate the matters in dispute by sending to arbitration that one as to which the time limited has not expired, but will itself deal with the whole subject. YOUNG *v.* BUCKETT **51 L. J. Ch. 504; [46 L. T. 266; 30 W. R. 511**

—— Artizans' Dwellings Act—Provisional and and final awards.
See ARTIZANS' DWELLINGS ACT.

—— Award—Lien of solicitor on amount of.
See SOLICITOR. 10.

ARBITRATION—*continued.*

—— Extras—Disputes as to.
See BUILDING CONTRACT.

—— Lands Clauses Act—Award—Umpire.
See LANDS CLAUSES ACT. 1.

ARREST—Of supposed lunatic—Mistake of law.
See FALSE IMPRISONMENT.

—— Unlawful—Homicide by police-officer.
See CRIMINAL LAW. 17.

ARSON.
See CRIMINAL LAW. 1, 2.

ARTICLES OF ASSOCIATION.
See COMPANY—ARTICLES.

ARTIZANS' DWELLINGS ACT (38 & 39 *Vict. c.* 36) — *Award of Arbitrator, provisional and final—Time when Ownership in Property taken under Act is transferred—"Owner."*] The Metropolitan Board of Works served a notice on the 23rd December, 1878, on B., who was owner of certain houses, stating that they would be taken compulsorily under the above Act. An arbitrator was appointed, and he made his provisional award on the 18th of March, 1880, and his final award on the 22nd of July, 1880. On the 18th of February, 1880, the Metropolitan Board of Works served a notice on B., stating that the houses were in a dangerous state, and requiring him to take down a portion and repair the rest of them; and on the 18th March a magistrate made an order that B. should comply with this notice. B. not having complied with this order, the Metropolitan Board of Works, on the 16th of July, 1880, gave him notice to hoard and take down the structure, and upon B.'s non-compliance therewith, the Metropolitan Board of Works, on the 19th July, incurred expenses in hoarding amounting to £26, and afterwards other expenses amounting in all to £78.

B. contended that at the time the expenses were incurred he was not the "owner," as the provisional award had then been made:—*Held*, that B. was at that time the "owner," since the ownership in the property was not transferred until the final award was made, and the Metropolitan Board of Works could therefore recover the expenses from him. BARNET *v.* METROPOLITAN BOARD OF WORKS **[46 L. T. 384; 46 J. P. 469**

—— Extinction of easements—Ancient lights.
See LIGHT AND AIR. 1.

ASSESSMENT—Income tax.
See REVENUE. 1, 2.

—— Poor-rate.
See POOR-RATE.

ASSIGNMENT—Goodwill in public-house.
See GOODWILL.

ASSIGNMENT OF DEBT—*Promissory Note not negotiable — Indorsement and Delivery — Gift — Right of Action—Judicature Act (Ireland), s.* 28, *subs.* 6.] The payee of a promissory note, not negotiable and not then payable, indorsed it as follows: "I indorse the within promissory note for £100 to my sister L.," and then delivered it to L. There was no consideration for the indorsement and delivery; but it was found as a fact that the payee had intended to vest in L. the beneficial interest in the money represented by the note. The payee died before the note fell

ASSIGNMENT OF DEBT—*continued.*

due, and bequeathed to one of the makers of the note all the moneys she should die possessed of or entitled to, and appointed him executor.

After the payee's death, and before action, express notice in writing of the indorsement was given to the makers:—*Held*, reversing the judgment of the Common Pleas Division (10 L. R. Ir. 45), (1) that as the appointment of one of the makers of the note as executor of the payee extinguished the debt prior to the service of the notice of assignment, there had been no legal transfer of the debt to L. within the above subsection, so as to enable her to maintain an action on the note; and (2) that the payee had not constituted herself a trustee of the note or debt for L. LEE *v.* MAGRATH - **10 L. R. Ir. 313 (C. A.)**

ASSURANCE.
See INSURANCE.

ATTACHMENT OF DEBT—Creditor of Plaintiff added as co-Plaintiff.
See PRACTICE—PARTIES. 4.

ATTACHMENT OF PERSON—Undertaking given by solicitor out of Court—Release.
See PRACTICE—ATTACHMENT OF PERSON.

ATTORNMENT CLAUSE—Distress under—Validity of.
See MORTGAGE. 2.

AUCTION—Bankrupt's property, sale of—Purchase by trustee's partner.
See BANKRUPTCY—TRUSTEE. 2.

AUCTIONEER—Authority to warrant goods entrusted for sale.
See PRINCIPAL AND AGENT. 2.

—— Clerk of—Receipt by—Costs, where made party to action.
See FRAUDS, STATUTE OF. 1.

—— Sale by Court—Authority of solicitor to receive deposit.
See PARTNERSHIP. 4.

AWARD.
See ARBITRATION.

B.

BAIL—Promise of indemnity for becoming, for third party.
See FRAUDS, STATUTE OF. 3.

—— Ship—Authority of ship's husband.
See SHIP. 13.

—— Ship—Damage action against.
See PRACTICE—ADMIRALTY.

BAILMENT—Contract between two connecting railways, for use of cars belonging to one.—Destruction of cars on hiring company's line, by accidental fire:—*Held*, that hiring company was not liable. ST. PAUL, &C. RAILROAD CO. *v.* MINNEAPOLIS, &C. RAILROAD CO. **37 Amer. R. 404 (U.S.)**

—— Detinue, action of, against bailee.
See DETINUE.

BANKER—Cheque, forged—Payment of, by bank

BANKER—*continued.*

—Laches of depositor—Estoppel. FRANK *v.* CHEMICAL NATIONAL BANK **38 Amer. R. 501 (U.S.)**

2. —— *Cheque—Post-dated—Bankruptcy of Payee before Date of Payment—Notice—Bankruptcy Act*, 1869 (32 & 33 *Vict. c.* 71), *s.* 94.] Between the giving of a post-dated cheque as payment of a debt then due, and the date of payment, the drawer had notice of the payee's bankruptcy, but did not stop the cheque, the proceeds of which were received by the bankrupt:—*Held*, that the money must be paid over again to the trustee in bankruptcy. *Ex parte* ARMSTEAD. *In re* PALMER - **51 L. J. Ch. 61; 45 L. T. 557; [30 W. R. 124**

3. —— Trust account—Deposit of trust and private funds—Banker's lien—Following trust-money—Notice, actual or constructive, of trust. NATIONAL BANK *v.* INSURANCE CO. **[14 Otto, 54 (U.S.)**

—— Appropriation of note deposited by agent, to agent's debt.
See PRINCIPAL AND AGENT. 5.

—— Lien—Stolen bond.
See BILL OF EXCHANGE. 6.

BANKRUPTCY:—

I. ACT OF BANKRUPTCY.
II. APPEAL.
III. COMPOSITION.
IV. DISCLAIMER.
V. LIQUIDATION.
VI. PETITION.
VII. PROOF.
VIII. PROTECTED TRANSACTION.
IX. RECEIVER.
X. REGISTRAR.
XI. STATEMENT OF AFFAIRS.
XII. TRUSTEE.
GENERAL.

I. BANKRUPTCY — ACT OF BANKRUPTCY—*Fraud—Suspicion of.*] The mere suspicion of fraud will not lead the Court to infer its existence.

C., who was in pecuniary difficulties, gave, in consideration of £900, a bill of sale over all his property to his brother W., in order that he might be able to pay off two pressing creditors, for the payment of whose debts W. was surety. W. immediately afterwards borrowed from these two creditors the exact sum so paid to them, thus relieving himself from his liability as surety:—*Held*, that the bill of sale was not impeachable as an act of bankruptcy, as it was for value for the purpose of paying debts. *Ex parte* JAY. *Re* MORRIS - - - - **45 L. T. 797**

—— Notice of, "available for adjudication".
See BANKRUPTCY—PROTECTED TRANSACTION. 1, 2.

II. BANKRUPTCY — APPEAL — *Time — Notice "Forthwith"—Bankruptcy Act*, 1869 (32 & 33 *Vict. c.* 71), *s.* 71—*Bankruptcy Rules*, 1870, *rr.* 143, 144.] An appeal having been brought from a County Court, the Registrar of which did not in fact receive notice of the appeal until three days after the time for appealing had elapsed:—*Held*,

II. BANKRUPTCY—APPEAL—*continued.*

that the appeal was out of time and could not be heard, as the notice was not sent "forthwith."

Ex parte Lamb. Re Southam (19 Ch. D. 169) followed. *Ex parte* LYON. *Re* LYON

[45 L. T. 768

2. —— *Time—Notice to Registrar—"Forthwith"—Bankruptcy Rules*, 1870, *rr.* 143, 144] On the 17th December a County Court order was made, and on the 22nd December notice of appeal was entered in London. On the five days following the County Court office was closed, in consequence of which the Registrar did not receive a copy of the appeal notice till the 28th, though the Respondents' country solicitors had received notice of the appeal on the 23rd December:—*Held* (reversing the decision of the Chief Judge), that the copy notice had been sent to the County Court Registrar "forthwith" within the meaning of the above rules. *Ex parte* WILLIAMS. *Re* JONES 46 L. T. 237, 242; 30 W. R. [416 (C. A.)

III. BANKRUPTCY — COMPOSITION — *Trustee to distribute — Non-payment of Instalment on Fixed Day—Cheque, Presentment of—Neglect of Creditor — Debtor's Summons — Bankruptcy Act*, 1869 (32 & 33 *Vict. c.* 71), *s.* 126—*Bankruptcy Rules*, 1870, *r.* 279.] Where resolutions for a composition, payable by instalments at certain definite times, had been duly passed by a liquidating debtor's creditors, who had also appointed a trustee under the above rule; and at the time when the first instalment of the composition became due the debtor, who had sent cheques to all the creditors, had also placed in the trustee's hands funds sufficient to pay the amount of that instalment to a particular creditor, who, however, neglected to present the cheque or apply to the trustee for the amount; such creditor is not entitled to institute bankruptcy proceedings against the debtor, with a view to having him adjudicated a bankrupt, upon the ground that he did not in fact receive the instalment of his composition on the day named in the resolutions for the composition. *Ex parte* ORTELLI. *Re* SHERRATT

[45 L. T. 799

IV. BANKRUPTCY—DISCLAIMER—*Of Lease by Trustee—Effect of — Distress for Year's Rent — Further Distress for Half-year — Covenants in Lease—Rights of Parties—Bankruptcy Act*, 1869 (32 & 33 *Vict. c.* 71), *ss.* 23, 34.] A tenant under a lease for twenty-one years filed a petition for liquidation on the 5th September, 1881; and on the 13th the landlord distrained for a year's rent, due on the 24th March, 1881, according to the terms of the lease. On the 13th October, 1881, trustees in the liquidation were appointed, and on the 25th October the landlord distrained for a further six months' rent due on the 29th September. On the 14th November the trustees in the liquidation, having had leave granted them by the Court, disclaimed the lease:—*Held*, that the landlord, having levied his distress for rent after the bankruptcy had begun, could, according to s. 34 of the above Act, distrain for one year only; and that the second distress was therefore invalid.

The lease contained a covenant by the landlord that he would, at the end or sooner determination

IV. BANKRUPTCY—DISCLAIMER—*continued.*

of the term, pay and allow to the tenant for (*inter alia*) the hay and straw grown during the last year, which should be left for the incoming tenant, at a feed price.

The tenant had admittedly broken certain farming covenants in the lease.

Held, that, owing to the operation of the trustees' disclaimer, the lease must be considered to be at an end for all purposes; and that the landlord must therefore pay for the hay and straw at the market price.

Held, further, that the landlord was not entitled to any damages for the breaches by the tenant of the farming covenants aforesaid. *Ex parte* MORRISH. *Ex parte* DYKE. *Re* MORRISH

[47 L. T. 26; 30 W. R. 952

—— Lease — Claim by lessor for unliquidated damages.

See BANKRUPTCY—PROOF. 2.

V. BANKRUPTCY—LIQUIDATION—*By Arrangement—Resolutions partly* ultrà vires—*Power to register the rest—Bankruptcy Act*, 1869 (32 & 33 *Vict. c.* 71), *s.* 125—*Bankruptcy Rules*, 1870, *r.* 295.] Resolutions for liquidation by arrangement of the affairs of a debtor were passed by his creditors, who appointed a trustee with power to sell the estate at such a price as should suffice to pay to the creditors a composition of 7*s.* 6*d.* in the pound. The resolutions for liquidation and the appointment of a trustee were registered by the registrar, but he struck out that part of the resolutions which gave power to the trustee to sell, as being *ultrà vires*:—*Held*, that the registrar had full power to strike out the void resolutions and retain the others. *Ex parte* FRAMPTON. *Re* WATKINS - - - - 45 L. T. 720

VI. BANKRUPTCY — PETITION—*For Liquidation—Misdescription in—No Assets—Immediate Discharge—Resolutions for*—Mala fides *—Registration refused.*] On the 31st August, 1881, a debtor presented his petition for liquidation, describing himself therein as an engineer, and giving a private address. Down to February, 1881, he had carried on business, at first in partnership, but afterwards alone, as an iron-founder at another address.

In February he made over this business to his father, but until May, 1881, it was carried on in the debtor's name. On the 30th August, 1881, the sheriff, under an *elegit*, seized the debtor's furniture, which formed, as it appeared, the whole of his assets:—*Held*, that the description in the petition was insufficient and misleading, and that resolutions for liquidation by arrangement and giving to the debtor his immediate discharge could not, for this reason, as well as because the resolutions were passed in the debtor's, and not the creditors', interest, be registered. *Ex parte* KERSHAW. *Re* WOODHOUSE - 45 L. T. 687

VII. BANKRUPTCY — PROOF—*By Mortgagee—Debt partly secured—Deposit of Title Deeds by Mortgagee—Production — Removal of Trustee—Discretion of Court.*] By a building agreement C., the owner of the land, agreed to execute to D., the builder, leases of certain houses which D. was to construct on the land, as they should be completed. Leases of two of the houses were

VII. BANKRUPTCY—PROOF.—*continued.*

afterwards granted to D., who deposited the agreement and the leases with Messrs. B. and T., his solicitors, to secure advances, and likewise executed to them a legal mortgage of certain freeholds to secure other sums advanced by them. C. also advanced sums of money to D. D. being made a bankrupt, C. proved for £1155 13*s.* 10*d.* Messrs. B. & T. also tendered a proof for £1959, and valued their securities at £1500, leaving a balance due to them of £459.

They did not produce their securities at the first meeting, but at an adjourned meeting they produced the building agreement and the mortgage deed. The other title-deeds were not produced, since Messrs B. & T. acknowledged that they had deposited them with their bankers, offering, however, to produce them at a day's notice.

The registrar, acting as trustee, refused to admit the proof, upon the ground that the title-deeds were deposited with the bankers, and not produced. After the rejection of Messrs. B. & T.'s proof, the creditors whose proofs had been admitted appointed a trustee, the bankers not voting. The County Court Judge afterwards allowed the proof and removed the trustee:—*Held*, (1) that the debt ought to have been admitted, having been properly proved, (2) that, as there was no imputation upon the trustee's conduct, he ought not to have been removed. *Ex parte* CASS. *Re* DUNKLEY - - - **45 L. T. 560**

2. —— *Right of—Disclaimer — Lease — Unliquidated Damages—Claim for non-payment of—Release of Trustee—Bankruptcy Act*, 1869 (32 & 33 *Vict. c.* 71), *ss.* 23, 21—*Bankruptcy Rules*, 1870, *rr.* 312, 313.] A petition for liquidation having been filed in August, 1881, by the lessee of a house and premises, the trustee on the 24th November, 1881, disclaimed the lease. On the 14th December the lessor tendered a proof, which was admitted, for £117 14*s.* 4*d.* in respect of rent and dilapidations, and also claimed unliquidated damages sustained by reason of the disclaimer, but without naming any amount. At a meeting of creditors held on the 6th January, 1882, a dividend of 1*s.* 6*d.* in the pound was declared payable on the 20th, and at the same meeting a resolution to release the trustee as from that day was passed. On the 4th March the lessor sent in a second proof for £309 7*s.* 6*d.* in respect of unliquidated damages, and claimed to be paid the dividend thereon:—*Held*, that, in the absence of fraud the lessor's remedy was by an action outside the bankruptcy, inasmuch as if any default had been made by the trustee, his liability therefor had been discharged by the release; and no fraud was imputed to him.

Ex parte Carter, Re Ware (8 Ch. D. 731) followed.

Semble, a creditor who with full knowledge of his rights neglects to assert them until after the estate has been fully administered and the trustee released, comes too late to prove for, and claim a dividend on, unliquidated damages. *Ex parte* BARNARD. *Re* GILL - - - **46 L. T. 824**

VIII. BANKRUPTCY—PROTECTED TRANSACTION—*Notice of Act of Bankruptcy "available for adjudication"—Bankruptcy Act*, 1869 (32 & 33 *Vict. c.* 71), *ss.* 11, 15, 95, *subs.* 1.] A firm of solicitors claimed to retain money in respect of a

VIII. BANKRUPTCY—PROTECTED TRANSACTION—*continued.*

transaction relating to the bankrupt's property, and entered into by them at a time when they had notice of an act of bankruptcy committed by the bankrupt, to which the trustee's title related back, but committed more than six months before the presentation of the petition on which he was afterwards adjudicated bankrupt, on the ground that s. 95, subs. 1, protected them, as having no notice of an act of bankruptcy available for adjudication:—*Held*, that the subsection did not protect them. (But see following case.) *Ex parte* TILLEARD. *Re* BARNES - - **30 W. R. 568**

2. —— *Notice of Act of Bankruptcy "available for adjudication"—Bankruptcy Act*, 1869 (32 & 33 *Vict. c.* 71), *ss.* 11, 15, 94, *subs.* 2.] An act of bankruptcy having been committed by B., a trader, he was, six months afterwards, upon a second such act, adjudicated a bankrupt. Between the dates of the first and second acts money was paid to him by a depositary who had at the time notice of the first act of bankruptcy.—*Held*, that s. 94, subs. 2, of the Bankruptcy Act, 1869, protected the payment.

Ex parte Gilbey (8 Ch. D. 248) followed. *Ex parte Tilleard, Re Barnes* (30 W. R. 568), virtually overruled. *Ex parte* QUILTER. *Re* BARNES **[30 W. R. 739 (C. A.)**

3. —— *Overseer—Payment by, after Petition filed—Title of Trustee—Bankruptcy Act*, 1869 (32 & 33 *Vict. c.* 71), *ss.* 11, 94, *subs.* 3, *s.* 125, *subss.* 5, 7.] A parish overseer, three days after he had filed a petition for liquidation, paid into the bank £55, to the credit of the treasurer of a board of guardians of the union, in respect of a call for a contribution from the poor-rates, which the board of guardians had previously made upon the overseers.—Upon the trustee in the liquidation claiming the £55 as money divisible amongst the creditors:—*Held*, that the payment into the bank was protected, it being a dealing with the bankrupt within subs. 3 of s. 94 of the Bankruptcy Act, 1869. *Ex parte* ATCHAM BOARD OF GUARDIANS. *Re* DICKIN **46 L. T. 238; 30 W. R. 644**

IX. BANKRUPTCY—RECEIVER—*Receiver and Manager—High Bailiff of County Court—Creditors' Nominee—Bankruptcy Rules*, 1870, *rr.* 260, 262, *Schedule to Forms, No.* 113.] The Court is bound to appoint the person nominated by the applicant as receiver and manager, if he is a fit and proper person; and a standing rule of the County Court "to appoint the high bailiff receiver and manager in every case, whether nominated or not, unless very special reasons are shewn for appointing another person," is *ultrà vires*. *Ex parte* WALTON. *Re* WALTON **51 L. J. Ch. 539; [46 L. T. 433; 30 W. R. 642**

X. BANKRUPTCY—REGISTRAR — *Duties of — Application to register — Issue directed — Bankruptcy Act*, 1869 (32 & 33 *Vict. c.* 71), *ss.* 67, 72 —*Bankruptcy Rules*, 1870, *rr.* 271, 295, 300.] The Registrar has not power, upon an application under the 295th Bankruptcy Rule to register the resolutions passed by the creditors, to direct an issue to be tried by a jury, as to the existence of a debt, but must either try the matter himself or refer it to the Judge. *Ex parte* WILLIAMS. *Re* BEETENSON - **46 L. T. 241; 30 W. R. 491**

X. BANKRUPTCY—REGISTRAR—*continued.*

—— Resolutions for liquidation—*Ultrà vires*
See BANKRUPTCY—LIQUIDATION.

XI. BANKRUPTCY—STATEMENT OF AFFAIRS—*Bill of Exchange—Mis-description of Holder of—Holder bound by Resolution—Bankruptcy Act*, 1869 (32 & 33 *Vict. c.* 71), *s.* 126.] The provisions of the above section, as to the entry in the statement of affairs of a debt due upon a bill of exchange, where the holder is unknown to the debtor, are substantially complied with if it can be proved that the entry was such, that the creditor actually received notices sent in accordance therewith. WOOD *v.* BATES - **46 J. P. 280**

XII. BANKRUPTCY—TRUSTEE—*Discretion of, as to time of Sale of Contingent Reversionary Interest—Bankruptcy Act*, 1869 (32 & 33 *Vict. c.* 71), *s.* 20.] A trustee in bankruptcy has, subject to the creditors' resolutions, a discretion as to when and how he will sell a contingent reversionary interest of the bankrupt, and unless it is shown that the trustee is doing that which is so utterly unreasonable and absurd that no reasonable man would so act, the Court will not, at the instance of a creditor, interfere with the discretion of the trustee. *Ex parte* LLOYD. *Re* PETERS **47 L. T. [64 (C. A.)**

2. —— *Sale of Bankrupt's Property by Auction by—Purchase by Trustee's Partner.*] The goodwill of the practice of a bankrupt, who was a medical man, was put up for auction by the trustee, and purchased by an agent for the brother and alleged partner of the trustee, another intending purchaser being present, but neglecting to bid, thinking the sale a mere sham:—*Held*, that the sale must be set aside. *In re* MOORE. *Ex parte* MOORE **51 L. J. Ch. 72; 45 L. T. 558; 30 [W. R. 123**

—— Joinder of—Interpleader issue.
See INTERPLEADER. 1.

—— Removal—Discretion of Court.
See BANKRUPTCY—PROOF. 1.

—— Title of—Payment by parish overseer.
See BANKRUPTCY—PROTECTED TRANSACTION. 3.

BANKRUPTCY—Administratrix—Costs of administration action.
See PRACTICE—COSTS. 1.

—— Cheque—Payee bankrupt before date of payment.
See BANKER. 2.

—— Debtor's summons—Non-payment of composition.
See BANKRUPTCY—COMPOSITION.

—— Fraudulent preference—Directors' fees.
See COMPANY—WINDING-UP. 11.

—— Friendly society, treasurer of—"Preferential debt."
See FRIENDLY SOCIETY. 1.

—— In Victoria—Realty in England.
See COLONIAL LAW.

—— Insolvent estate—Creditor's administration action.
See EXECUTOR—ACTIONS. 3.

—— Of under-tenant—Claim by trustee.
See LANDLORD AND TENANT. 1.

BANKRUPTCY—*continued.*

—— Production of documents.
See PRACTICE—DISCOVERY—DOCUMENTS. 2.

—— Solicitor of bankrupt—Lien on bankrupt's documents.
See SOLICITOR. 8.

BANKRUPTCY RULES.
See LIST OF RULES.

BASTARDY—*Appeal*—7 & 8 *Vict. c.* 101, *s.* 4—8 & 9 *Vict. c*, 10, *s.* 3—*Summary Jurisdiction Act*, 1879 (42 & 43 *Vict. c.* 49), *ss.* 31, 32, 54, 55.] An order in bastardy may be appealed from either in the manner prescribed by the Bastardy Acts, or in that prescribed by the Summary Jurisdiction Act of 1879. The 54th section of the last-named Act, which applies the Act to (*inter alia*) "an appeal from an order in bastardy," does not apply the appeal sections of that Act to the exclusion of similar provisions as to appeals in the Bastardy Acts, but applies the Act generally to bastardy orders, in order that doubts as to whether they are "orders or convictions" may be removed. REG. *v.* MONTGOMERYSHIRE JJ. **51 L. J. M. C. 95; 46 [J. P. 517**

2. —— *Evidence.*] In bastardy proceedings the child, over two years old, was exhibited to the jury, and its resemblance to the Defendant commented on:—*Held*, no error, especially when the jury was directed that if they saw no resemblance they should disregard the comments. STATE *v.* SMITH - - - **37 Amer. R. 192 (U.S.)**

3. —— *Jurisdiction of Justices—Order for support of Child—Subsequent Agreement by Mother to release Putative Father from Liability under Order.*] The Respondent obtained an order by which the Appellant was ordered to contribute to the support of the Respondent's bastard child. She afterwards, in consideration of £32, agreed to release and indemnify the Appellant for ever from all actions, suits, and proceedings in respect of the child:—*Held*, that the agreement did not bar the jurisdiction of the justices to enforce the order on the mother's application. GRIFFITH *v.* EVANS **[46 L. T. 417; 30 W. R. 427**

BEERHOUSE.
See INN; INNKEEPER.

BENEFICE—Avoidance of—Satisfaction of contempt.
See ECCLESIASTICAL LAW. 2.

—— Union of—Evidence—Recovery of tithes.
See TITHE RENT-CHARGE.

BILL—Promotion of—Consent of ratepayers to—Alteration.
See LOCAL ACT.

BILL OF COSTS—Taxation of.
See SOLICITOR. 1—5.

BILL OF EXCHANGE (and **PROMISSORY NOTE**)—Acceptance, accommodation—No implied warranty that bill is drawn against funds. PEOPLE'S BANK *v.* BOGART - **37 Amer. R. 481 (U.S.)**

2. —— Acceptance—No place of payment specified—Presentation at place of date, *held* sufficient. WITTKOWSKI *v.* SMITH **37 Amer. R. 632 [(U.S.)**

3. —— Alteration of note by insertion of words "or bearer," without consent of maker—

BILL OF EXCHANGE (and **PROMISSORY NOTE**) —*continued.*

Authority of partner to indorse note payable to order of another partner. McCauley *v.* Gordon [37 Amer. R. 68 (U.S.)

4. —— Alteration—Unauthorized sealing after execution makes a note void. Vaughan *v.* Fowler - - - 37 Amer. R. 731 (U.S.)

5. —— *Ambiguous Instrument—Extrinsic Evidence—Stamp—Figures at bottom.*] An action was brought for £500 upon a promissory note which was in the following form:—"Witness, John Hutley. Rivenhall, October 2, 1860. Three months notice I promise to pay Mr. Jonathan Hutley interest £5 per cent. per annum for £500 value received. Dan Marshall, Charles Marshall. [5*s.* stamp.] £500."

It was admitted that on the 2nd October, 1860, £500 was advanced by Jonathan Hutley to Dan Marshall, and that Charles Marshall, the Defendant signed as surety for his brother:—*Held*, a good promissory note for £500.

Where the body of a note is worded ambiguously, the figures at the bottom of the note and the stamp may be looked at for the purpose of construing them. Hutley *v.* Marshall [46 L. T. 186

6. —— Bonâ fide *Holder for value—Theft of Bond payable to Bearer — Banker's Charge.*] Advances were made by a bank to a customer, on promissory notes, each of which the customer indorsed with a charge on all his property, shares, or securities, which were then, or might be at any time prior to the payment of the note, "in the possession or power of the holder thereof for the time being," for the payment of the note with interest.

After several such transactions had taken place, the customer obtained an advance upon a French bond payable to bearer, and transferable by delivery, and he afterwards handed another French bond to the bank, and requested that both might be sold on his account. On this occasion he obtained no advance from the bank.

On the bonds being sent to the bank's brokers for sale, it was for the first time discovered that both had been stolen:—*Held*, that the bank had a charge on the first bond, since an advance had been obtained on it, but that there was no charge on the second, for, no advance having been made upon it, there could be no charge otherwise than by virtue of the charge indorsed upon the promissory note, which did not apply to the case, because it could only apply to the property of the drawer of the note placed in the possession of the holder for a purpose not inconsistent with an assertion of such a charge, which was not the case as regards the bond in question. Symons *v.* Mulkern - - 46 L. T. 763; 30 W. R. 875

7. —— Cheque—Order for payment of money not specifying payee, is not a cheque, and no action lies on it for non-payment. McIntosh *v.* Lytle [37 Amer. R. 410 (U.S.)

8. —— Date left blank—Fraudulent filling up of, by payee—Transfer to *bonâ fide* purchaser—Action maintainable by latter. Overton *v.* Matthews - - - 37 Amer. R. 9 (U.S.)

9. —— Forgery of indorsement—Promise by

BILL OF EXCHANGE (and **PROMISSORY**) —*continued.*

person whose name is forged to pay, is Shisler *v.* Vandike - 37 Amer. R. 768

10. —— *Fraud — Signature obtained* Action by *bonâ fide* holder of note against ma... Plea that signatures were obtained by fra... fraud, and representation that the note was a... ferent contract, and that one of the makers c... not read English, and that note was incorr... and fraudulently read to him by payee:—... insufficient. Ruddell *v.* Fhalor [37 Amer. R. 177 (U

11. —— Indorsement in blank—Evidence... contemporaneous parol agreement that ind... ment was without recourse:—*Held*, inadmissi... Martin *v.* Cole - - 14 Otto, 30 (U.

12. —— Joint note — Name of one mak... forged—Other, though only surety, *Held*, bou... to innocent payee. Helms *v.* Wayne Agricu... tural Co. - - 38 Amer. R. 147 (U.

13. —— Joint note, signed by two, payable... order of "myself," and placed by one into han... of other to be negotiated for his own benefit:... *Held*, transferable by indorsement of that oth... alone — Evidence. First National Bank... Fowler - - - 38 Amer. R. 610 (U.

14. —— Payment of draft by drawer to indor... on his agreement to get and surrender it:—*He*... drawer still liable in action by *bonâ fide* transfe... of draft. Wilcox *v.* Aultman 37 Amer. R. [(U.

15. —— Seal—Omission of—Note intended ... parties to be sealed:—*Held*, that it must be treat... as between the parties, as sealed. McCarley ... Board of Supervisors 38 Amer. R. 338 (U.

—— Agent—Authority of, to sign note—Su... agent.
See Principal and Agent. 3.

—— Alteration of—Time of.
See Evidence. 7.

—— Holder — Mis-description, in statement affairs, of.
See Bankruptcy — Statement Affairs.

—— Not negotiable—Indorsement and delivery Gift.
See Assignment of Debt.

BILL OF LADING.
See Ship. 1, 2.

BILL OF SALE—*After-acquired Property—Assignment of—Growing Crops—Specific Description* The grantor of a bill of sale assigned thereby the grantee, among other things, the "growing crops" then in and about certain specified premises, and also the "growing crops" which any time thereafter should be in or about the same or any other premises of the grantor during the continuance of the security:—*Held*, that the assignment was sufficient to pass the property the future growing crops on their coming in existence, and to entitle the grantee to maintain an action for their recovery, or for damages for conversion.

Lazarus v. *Andrade* (5 C. P. D. 318) followed *Belding* v. *Read* (34 L. J. Ex. 213; 3 H. L. Cas. 955 distinguished. Clements *v.* Mathews 47 L. T. 2

BILL OF EXCHANGE (and **PROMISSORY NOTE**) *—continued.*

Authority of partner to indorse note payable to order of another partner. McCauley *v.* Gordon [37 Amer. R. 68 (U.S.)

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On the bonds being sent to the bank's brokers for sale, it was for the first time discovered that both had been stolen :—*Held*, that the bank had a charge on the first bond, since an advance had been obtained on it, but that there was no charge on the second, for, no advance having been made upon it, there could be no charge otherwise than by virtue of the charge indorsed upon the promissory note, which did not apply to the case, because it could only apply to the property of the drawer of the note placed in the possession of the holder for a purpose not inconsistent with an assertion of such a charge, which was not the case as regards the bond in question. Symons *v.* Mulkern - - 46 L. T. 763 ; 30 W. R. 875

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9. —— Forgery of indorsement—Promise by person whose name is forged to pay, is void. Shisler *v.* Vandike - 37 Amer. R. 702 (U.S.)

BILL OF EXCHANGE (and **PROMISSORY NOTE**) *continued.*

10. —— *Fraud — Signature obtained by.*] Action by *bonâ fide* holder of note against makers. Plea that signatures were obtained by payee's fraud, and representation that the note was a different contract, and that one of the makers could not read English, and that note was incorrectly and fraudulently read to him by payee :—*Held*, insufficient. Ruddell *v.* Fhalor [37 Amer. R. 177 (U.S.)

11. —— Indorsement in blank—Evidence of contemporaneous parol agreement that indorsement was without recourse :—*Held*, inadmissible. Martin *v.* Cole - - 14 Otto, 30 (U.S.)

12. —— Joint note — Name of one maker forged—Other, though only surety, *Held*, bound to innocent payee. Helms *v.* Wayne Agricultural Co. - - 38 Amer. R. 147 (U.S.)

13. —— Joint note, signed by two, payable to order of "myself," and placed by one into hands of other to be negotiated for his own benefit :—*Held*, transferable by indorsement of that other alone — Evidence. First National Bank *v.* Fowler - - - 38 Amer. R. 610 (U.S.)

14. —— Payment of draft by drawer to indorsee on his agreement to get and surrender it :—*Held*, drawer still liable in action by *bonâ fide* transferee of draft. Wilcox *v.* Aultman, 37 Amer. R. 92 [(U.S.)

15. —— Seal—Omission of—Note intended by parties to be sealed :—*Held*, that it must be treated, as between the parties, as sealed. McCarley *v.* Board of Supervisors 38 Amer. R. 338 (U.S.)

—— Agent—Authority of, to sign note—Sub-agent.
See Principal and Agent. 3.

—— Alteration of—Time of.
See Evidence. 7.

—— Holder — Mis-description, in statement of affairs, of.
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—— Not negotiable—Indorsement and delivery—Gift.
See Assignment of Debt.

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BILL OF SALE—*After-acquired Property—Assignment of—Growing Crops—Specific Description.*] The grantor of a bill of sale assigned thereby to the grantee, among other things, the "growing crops" then in and about certain specified premises, and also the "growing crops" which at any time thereafter should be in or about the same or any other premises of the grantor during the continuance of the security :—*Held*, that the assignment was sufficient to pass the property in the future growing crops on their coming into existence, and to entitle the grantee to maintain an action for their recovery, or for damages for conversion.

Lazarus v. *Andrade* (5 C. P. D. 318) followed. *Belding* v. *Read* (34 L. J. Ex. 213 ; 3 H. L. Cas. 955) distinguished. Clements *v.* Mathews 47 L. T. 251

BILL OF SALE—*continued.*

2. —— *Consideration—Statement of—Bills of Sale Act*, 1878 (41 & 42 *Vict c.* 31), *s.* 8.] A bill of sale, after recitals to the effect that the mortgagor had applied to the mortgagees to advance to him the sum of £70, less £16, the agreed interest and expenses, to be deducted and retained as thereinafter expressed, witnessed that, in consideration of £54, being the said sum of £70 less the said sum of £16 deducted and retained therefrom, and being the agreed interest and expenses in consideration of which the loan was granted, and which said sums of £54 and £16 conjointly were (thereinafter called the loan) by the mortgagees paid to the mortgagor at or before the execution thereof, the receipt whereof the mortgagor thereby acknowledged, &c. It appeared that only £54 had been paid by the mortgagee to the mortgagor when the bill of sale was executed:—*Held*, that the consideration was truly set forth within the above section. COLLIS *v.* TUSON - **46 L. T. 387**

3. —— *Construction — Book Debts — Sale of Goods left in Grantor's Possession—Person entitled to Proceeds of Sale.*] By an unregistered bill of sale, to secure £2500 lent by B. to H. (a tobacconist), it was provided that a share in the profits of H.'s business was to be paid to B. instead of interest, and the leasehold premises on which the business was carried on were mortgaged to B. to secure his loan, together with the goodwill "and all the goods, wares, merchandise, stock-in-trade, fixtures, furniture, articles, effects, and things belonging to" H. in respect of the business; and it was declared "that all fixtures, furniture, goods, wares, merchandise, articles, and things" which should, during the continuance of the security, "be brought upon the premises," or "be in any other place or places in the actual or constructive possession of H." should be included in the security. The deed also provided that the property should remain in the possession of H. until B. should take possession, for its insurance, and for the keeping of proper books of account, in which entries were to be made "of all the moneys, goods, wares, merchandise, debts, and other effects belonging or owing to" H. in respect of the business. H. sold some of the goods on credit, but did not receive the price. B. took possession of the premises under the powers contained in the deed, and gave notice to the persons who had bought goods on credit to pay the price to him. H. soon after presented a petition for liquidation. Both B. and the trustee in liquidation claimed the book debts:—*Held*, reversing the decision of Bacon, V.C., that the deed did not assign the book debts, which belonged to H.'s trustee, being the proceeds of goods allowed to be sold by H. in his own business and for his own profit. BROWNE *v.* FRYER
[45 L. T. 521; 46 L. T. 636 (C.A.)

4. —— *Registration — Affidavit of Execution and Attestation—Description of Grantor—Bills of Sale Act*, 1878 (41 & 42 *Vict. c.* 31), *ss.* 8, 10, *sub-ss.* 1, 2.] A bill of sale was attested by a solicitor and a clerk. The clerk made the affidavit filed on registration, and in it he deposed to the signatures of the grantor, the attesting witnesses, and to the explanation by the solicitor, "one of the attesting witnesses," of the effect of the bill of sale, before the grantor executed it.

BILL OF SALE—*continued.*

It was not, however, stated by the affidavit that that the solicitor was present when the bill of sale was executed:—*Held*, that this affidavit was insufficient, the registration invalid, and the bill of sale consequently inoperative against the trustee in bankruptcy of the grantor.—*Ford* v. *Kettle* (9 Q. B. D. 139) followed. The affidavit further stated that the grantor resided at B., "and is a stone merchant and quarry owner":—*Held*, sufficient, although the grantor carried on business as lessee of stone quarries at two places other than B. *Ex parte* KNIGHTLEY. *Re* MOULSON
[51 L. J. Ch. 823; 46 L. T. 776; 30 W. R. 844

—— Impeachable as an act of bankruptcy
See BANKRUPTCY—ACT OF BANKRUPTCY.

BOARD OF TRADE — Notice to, of action in respect of collision at sea.
See SHIP. 10.

BOND—Administration—Guarantee society.
See ADMINISTRATOR. 1.

BOOK DEBTS—Assignment of—Construction.
See BILL OF SALE. 3.

BREACH OF PROMISE OF MARRIAGE—Promise by married man.
See FRAUD. 1.

BREACH OF TRUST.
See TRUSTEE.

BRIBERY — Prosecution for penalties — Wilful delay.
See PARLIAMENT. 1.

BROKER—Advances by, to agent, on security of bills of lading.
See PRINCIPAL AND AGENT. 7.

—— Employment of—Bought note—Negligence
See TRUSTEE. 6.

—— Revocation of agency of—Compensation.
See PRINCIPAL AND AGENT. 4.

BROTHEL—Permitting inn to be used as—Evidence.
See INN.

BUILDING—*Damage done by, to Adjoining Tenement—Liability for—Contractor.*] Where building operations were carried on so as unnecessarily to cause substantial injury to the business and goods of the tenant of adjoining premises:—*Held*, that the proprietor was liable in damages, although the execution of the work was entirely in contractors' hands. CAMERON *v.* FRASER **9 C. of S. Cas. [26 (Sc.)**

—— Adjoining new street—Undertaking to construct roadway.
See ROADWAY.

—— Injury to, by mining operations.
See MINES. 2.

—— Support of—Implied reservation.
See SUPPORT.

BUILDING CONTRACT—Arbitration—Condition for, to settle dispute as to extras:—*Held* valid, and a condition precedent to recovery of price of extras. HOLMES *v.* RICHEY **38 Amer. R. 54 (U.S.)**

BUILDING ESTATE — Restrictive covenants — Enforcement of.
See COVENANT. 3.

BURDEN OF PROOF—Discretion of trustee — Improper use of.
See WILL—CONSTRUCTION. 1.

—— Gift from husband to wife.
See UNDUE INFLUENCE.

—— Right dependent on a negative.
See EVIDENCE. 4.

—— Ward of Court—Action to restrain removal of.
See INFANT. 2.

BURIAL GROUND—Removal of tombstone.
See TOMBSTONE.

BUSINESS—Direction to carry on.
See WILL—CONSTRUCTION. 26.

BYE-LAW—Validity—Alteration in rules of club.
See CLUB.

C.

CALLS—Order for payment of—Notice.
See COMPANY—WINDING-UP. 3.

—— Prepayment of.
See COMPANY—WINDING-UP. 7.

CAPITAL OF COMPANY—Reduction of.
See COMPANY—REDUCTION OF CAPITAL.

CARRIER:—
I. GOODS.
II. PASSENGERS.

I. CARRIER—GOODS—Connecting carrier—Liability of, for losses occurring in his hands—Act of God on unseaworthy vessel. PACKARD *v.* TAYLOR - - - **37 Amer. R. 37 (U.S.)**

2. —— *Loss of Goods—Value not declared—Price of Goods without Discount over £10—True Value—Liability of Carrier*—11 *Geo.* 4 *&* 1 *Will.* 4, *c.* 68, *s.* 1.] Jewellery was sold by the manufacturers to the Plaintiff for the price of £11 14*s.*, which was to be reduced to £9 19*s.* if paid within one month, which the Plaintiff did. The Plaintiff consigned the jewellery to a customer by the Defendant Co.'s railway, without declaring the value, and it was lost in transit. The price charged to the customer exceeded £11 14*s.* The Plaintiff sued the Defendant Co. in the County Court for £9 19*s.*, but the Judge gave a verdict for the Defendants on the ground that, as the value of the goods exceeded £10 and had not been declared, the Defendants were protected by the above-mentioned section:—*Held*, on appeal, that the County Court Judge was right, and that in such cases "value" means value to the consignor, *i.e.*, the price his consignee has contracted to pay for the goods, and that therefore the Plaintiff could not recover, as the price contracted to be paid exceeded £10. BLANKENSEE *v.* LONDON AND NORTH WESTERN RAILWAY CO. - - - **45 L. T. 761**

3. —— *Special Conditions—Railway Company—Reasonableness*—17 *&* 18 *Vict. c.* 31, *s.* 7.] In an action against a Railway Co. for negligence, whereby a horse carried by them was injured, the Defendants pleaded that they received the horse under a special contract, containing a condition that, in case of animals for which a contract note

I. CARRIER—GOODS—*continued.*

with two rates should be offered to the customer, the Defendants would give him the alternative of carrying at either rate; that at the full rate, which would be charged when the contrary was not expressed, the Defendants would undertake the ordinary duties of carriers, subject to the conditions in the note and their statutory rights; but that at the reduced rate the Defendants would carry at the owner's risk, exempt from all liability not occasioned by the wilful misconduct of their servants acting within the scope of their authority; and that the Plaintiff elected to have his horse carried at the lower rate; and that the injuries were not caused by the Defendants' servants as aforesaid.

They also pleaded that another condition of the contract was that they should not be liable for the fear or restiveness of animals; and that the injuries complained of were caused by the horse's restiveness. The Plaintiff signed a contract note containing the above conditions:—*Held*, that the condition exempting the Defendants in cases of "restiveness, &c.," did not embrace cases in which the injury resulted immediately from fear or restiveness occasioned by some negligence or want of care on the part of the Defendants, but only injury from fear, &c., caused by the ordinary incidents of transit, without any negligence on the part of the Co., and that, in this limited sense, the condition was reasonable:

Held, also, that the alternative rates need not appear on the contract-note, but that it was sufficient that it referred to the tariff containing all the rates. The contract-note also contained the following conditions; (8) that no claims in respect of goods would be allowed unless made within three days after delivery; and (9) that all goods were received subject to the Co.'s general lien both for carriage thereof and all other charges against the customer:—

Held, that "goods" meant inanimate goods, and that the conditions were reasonable; but, *Semble*, that they did not properly come before the Court for decision under 17 & 18 Vict. c. 31, s. 7, which deals only with the receiving, forwarding, or delivering of animals, goods, and things, and these conditions related to something occurring after delivery. MOORE *v.* GREAT NORTHERN RAILWAY CO. - - **10 L. R. Ir. 95**

—— Delivery of goods to—Receipt—Acceptance.
See FRAUDS, STATUTE OF. 6.

—— Liability as insurer.
See CONTRACT. 11.

—— Railway.
See RAILWAY.

—— Stoppage *in transitu*—Transit extended by purchaser.
See SALE OF GOODS. 1.

II. CARRIER—PASSENGERS—Luggage—Connecting lines—One accepting fare *held* liable for safety of luggage over entire route—Limitation of liability by words on ticket—Agreement of passenger to, necessary—Evidence. BALTIMORE, &c., RAILROAD CO. *v.* CAMPBELL
[38 Amer. R. 617 (U.S.)

2. —— Negligence, contributory—Passenger

II. **CARRIER—PASSENGERS**—*continued.*

injured whilst riding in baggage car by permission of conductor, but against rules of Co., cannot recover. PENNSYLVANIA RAILROAD Co. *v.* LANGDON - - - **37 Amer. R. 651 (U.S.)**

3. —— Negligence—Invitation to passengers to alight at goods station—Co. bound to keep platform, &c., in safe condition. STEWART *v.* INTERNATIONAL, &c., RAILROAD Co. **[37 Amer. R. 753 (U.S.)**

4. —— Negligence—Railway bed undermined by sudden rain-fall—Defect invisible—Co. *held* not liable. RAILROAD Co. *v.* HALLORAN **[37 Amer. R. 744 (U.S.)**

—— Infant travelling in freight car without paying fare—Injury.
See MASTER AND SERVANT. 5.

—— Railway.
See RAILWAY.

CERTIFICATE—Chief Clerk's—Order to vary.
See PRACTICE—CHIEF CLERK'S CERTIFICATE.

—— Registrar of County Court—Signing judgment.
See COUNTY COURT. 2.

—— Surveyor of Highway Authority—Proceedings under Highways, &c., Act, 1878.
See HIGHWAY. 1, 2.

CERTIORARI—Corporation—Misapplication of funds.
See CORPORATION. 1.

—— Sureties to be of good behaviour—Jurisdiction of justices.
See JUSTICE OF THE PEACE. 3, 4.

CHAPLAIN—Gift of annual sum to, and his successors.
See WILL—CONSTRUCTION. 3.

CHARGE OF DEBTS—Mortgages.
See WILL—CONSTRUCTION. 25.

CHARGE OF LEGACIES—By will—Subsequent codicil.
See WILL—CONSTRUCTION. 7.

CHARITY—*Mortmain—Bequest for building Almshouses when Site procured.*] A testator bequeathed £1000 upon trust "when a proper site can be obtained for that purpose," to "erect and build" almshouses, expressing a hope that some other benevolent person would "hereafter sufficiently endow the said almshouses":—*Held*, not void under the Mortmain Act. *Re* WHITE'S TRUSTS - - **46 L. T. 248; 30 W. R. 837**

2. —— *Mortmain—Bequest for Establishment of Charitable Institutions in such manner as not to violate Mortmain Acts.*] A testator bequeathed £4000, out of such part of his personalty as should be applicable by law for charitable purposes, to his trustees, to apply the same "in the establishments of a soup-kitchen for the parish of S., and of a cottage hospital adjoining thereto, in such a manner as not to violate the Mortmain Acts; and further directed his trustees to set apart £2500 out of pure personalty, and, "so far as they lawfully could without violating the laws enacted against the disposition of property in mortmain, apply a sum not exceeding £1000, part thereof, in establishing an Independent chapel at A.," and

CHARITY—*continued.*

stand possessed of the residue upon certain trusts for providing a stipend for the minister of the chapel, and otherwise for its benefit:—*Held*, varying the decision of Hall, V.C., who had held the first bequest only valid (50 L. J. Ch. 597; 45 L. T. 8; 1881 Digest, col. 25) that there was no distinction between the two bequests, both being valid. *In re* JACKSON. BISCOE *v.* JACKSON **51 L. J. Ch. [464; 46 L. T. 355 (C.A)**

—— Bequest to—Gift of annual sum to chaplain and successors.
See WILL—CONSTRUCTION. 3.

—— Devise to Bishop of B. "for time being," in trust for sisterhood.
See WILL—CONSTRUCTION. 4.

CHARITY COMMISSIONERS—Consent of—Lands compulsorily taken—Payment into Court of purchase-money.
See LANDS CLAUSES ACT. 3.

CHARTERPARTY.
See SHIP. 1—3.

CHATTELS—Sale of.
See SALE OF GOODS.

CHEQUE.
See BANKER. 1, 2.

—— For payment of composition—Non-presentment.
See BANKRUPTCY—COMPOSITION.

—— No funds to meet—Limitation.
See LIMITATIONS, STATUTE OF. 1.

—— Order for payment of money not naming payee.
See BILL OF EXCHANGE. 7.

CHIEF CLERK—Certificate of—Order to vary.
See PRACTICE—CHIEF CLERK'S CERTIFICATE.

CHOSE IN ACTION—Assignment of.
See ASSIGNMENT OF DEBT.

CHURCH RATES—"*Contract*" *for Valuable Consideration—Local Act—Compulsory Church Rates Abolition Act*, 1868 (31 & 32 *Vict. c.* 109), *ss.* 1, 5—51 *Geo.* 3, *c. cl.*, *s.* 19.] Where a private or local Act embodies an arrangement based on good and valuable consideration, and providing for the levying of church rates, though such arrangement is not strictly speaking in the form of an agreement between the parties concerned, it is a "contract" within sect. 5 of the Compulsory Church Rates Abolition Act, 1868, and protects any rate levied for ecclesiastical purposes under it. BELL *v.* BASSETT **52 L. J. Q. B. 22; 47 L. T. 19**

2. —— *Rate made under Local Act—For Ecclesiastical and non-Ecclesiastical Purposes—Compulsory Church Rates Abolition Act*, 1868 (31 & 32 *Vict. c.* 109), *ss.* 2, 5, 10.] The hamlet of P. was, in 1817, by a local Act (57 Geo. 3, c. 34), taken from the parish of S. and formed into a separate parish with a separate church and incumbent, and the inhabitants of P. were thereby discharged and exempt from the payment of small tithes, and the rector ceased to have the cure of souls over the new parish. It was also provided by the local Act (s. 61) that for the purposes of the Act it should be lawful for the vestry to make a rate upon the occupiers of all lands, houses, . . . tenements and hereditaments within the parish.

CHURCH RATES—*continued.*

There was also a clause in the Act providing that the rate was to be applicable to other purposes besides the payment of the incumbent, viz., purposes connected with the repair of the church and the celebration of divine service.

The vestry of P. made a rate which they applied to eighteen different purposes, four of which were non-ecclesiastical, and fourteen ecclesiastical, purposes within the meaning of s. 10 of the Compulsory Church Rates Abolition Act, 1868:—*Held*, that the rate was not made "in lieu of or in consideration of the extinguishment . . . . or abolition of tithes" within the meaning of s. 5 of the Compulsory Church Rates Abolition Act 1868, and that therefore it came within s. 2 of that Act.

Held, also, that the rate might be treated as a valid rate, only as a separate rate and not a church rate, and that it was therefore bad and non-enforceable for ecclesiastical purposes, but good for non-ecclesiastical purposes. WATSON *v.* ALL SAINTS' VESTRY, POPLAR **46 L. T. 201; 46 J. P. 454**

CLAIM, STATEMENT OF—Non-delivery of—Order dismissing action.
See PRACTICE—PLEADING. 1.

CLASS—Bequest to—"Survive."
See WILL—CONSTRUCTION. 6.

—— Gift to, "from S. downwards."
See WILL—CONSTRUCTION. 5.

CLUB—*Expulsion of Member—Conduct injurious to Character and Interests of Club—Validity of Bye-law altering Rules*—Bona fides.] It was provided by the rules of a club that all its concerns and arrangements for management should be conducted by a committee who should have all needful powers for its government, election of members, additional committee members; and should be empowered to publish bye-laws as they deemed expedient.

It was also provided that the entrance fee should be subject to any modification by the committee; that proposed new members should be balloted for, and their names posted for fourteen days. The committee passed a bye-law that retired members might be re-admitted on payment of back subscriptions; and G. and others were re-admitted, not only without entrance fee but without the other formalities prescribed by the rules:—*Held*, that the committee had power to make such a bye-law.

The rules gave power to a majority of two-thirds of the committee to expel any member whose conduct they deemed injurious to the character and interests of the club. The Plaintiff, a member, had at a meeting of the club protested against the re-admission of G. as being contrary to the rules, and had designated the committee a "pocket borough," and had on another evening (30th November, 1881) used the same term in the club-house, stating also that "the committee could propose and alter any rules they deemed fit." Some of these remarks were made at the bar of the club.

The committee by a majority of two-thirds passed a resolution that the Plaintiff's conduct on the 30th November, 1881, and in the club generally, in publicly disparaging the committee before strangers and before the servants of the club, was injurious to the character and interests

CLUB—*continued.*

of the club, and that the Plaintiff be requested to resign.

The majority would not have been complete had not G. voted with it. The Plaintiff moved to restrain the committee from expelling him, alleging that the resolution was solely the result of ill will towards him on the part of some of the committee, and particularly of G., and not of a *bonâ fide* regard for the club's interests:—*Held*, that, as there was nothing shewing that the resolution of the committee was not *bonâ fide*, the reason given not being of itself evidence of malice, the Court could not interfere. LAMBERT *v.* ADDISON - - - - - **46 L. T. 20**

CODICIL—Charge by will of legacies "hereinafter bequeathed"—Legacies in codicil.
See WILL—CONSTRUCTION. 7.

—— Mis-recital of will in—Inconsistent dispositions.
See WILL—CONSTRUCTION 19.

COLLISIONS AT SEA.
See SHIP. 4—9.

COLONIAL LAW—*Victoria*—*Bankruptcy in*—*Realty in England.*] In a bankruptcy in Victoria, where no deed has been executed under the colonial statute, realty belonging to the bankrupt and situate in England does not vest in the assignee. WAITE *v.* BINGLEY **51 L. J. Ch. 651; 30 W. R. 698**

—— Victoria—Will made in—Proof of—Letters testimonial.
See EVIDENCE. 11.

COMMISSION—To take evidence of foreigner—Affirmation.
See EVIDENCE. 3.

COMMITMENT.
See CONTEMPT OF COURT; PRACTICE—ATTACHMENT OF PERSON.

COMPANY:—

I ARTICLES.
II. DIRECTORS.
III. REDUCTION OF CAPITAL.
IV. REGISTRATION.
V. WINDING-UP.
GENERAL.

I. COMPANY—ARTICLES—*Construction*—"*Net Profits*"—*Preference and Ordinary Shares—Reserve Fund.*] By the articles of association of a Co., incorporated with a capital of £1,150,000, divided into 35,000 preference, and 80,000 ordinary, shares of £10 each, it was provided (art. 97) that the "net profits" of the Co. were to be divided in payment of a dividend at 7 per cent. on the preferred shares, and, subject thereto, a like dividend on the ordinary shares, and the surplus of the net profits was to be divided rateably amongst all the shareholders. By art. 98 no such distribution of profits was to be made without the consent of a general meeting, and by art. 99 in case of a dispute as to the amount of net profits the decision of the Co. in general meeting was to be final. Art. 100 empowered the directors, before recommending a dividend on any of the shares, to set aside out of the net profits such fund as they might think proper as a reserve fund, but provided that they should not be bound so to do. The Co. worked under a conces—

I. COMPANY—ARTICLES—*continued.*

sion terminable in 1907, in the purchase of which and the business of other Cos. interested therein £1,058,303 had been expended.

An action having been brought by an ordinary shareholder to prevent the payment of dividends on the preference shares without a sum being set apart to replace the capital expended in the purchase of the concession:—*Held*, that, as by the articles the Co. in general meeting was to decide the meaning of "net profits," and the directors were to decide the question of a reserve fund, the Court could not interfere. LAMBERT *v.* NEUCHATEL ASPHALTE Co. - **51 L. J. Ch. 882; [47 L. T. 73; 30 W. R. 913**

2. —— *Construction—Payment of Dividend in "Proportion to Shares"—Where different Amounts paid-up on Shares—Companies Acts*: 1862, *1st Sched., Table A., Reg.* 72; 1867, *s.* 24—*Companies Clauses Consolidation (Scotland) Act*, 1845 (*8 & 9 Vict. c.* 17), *s.* 123.] One of the articles of association of a Co. incorporated under the Companies Acts, provided that "the directors may . . . . declare a dividend to be paid to the members in proportion to their shares." The interpretation clause provided that "capital" should mean "the capital for the time being of the company"; and "shares" "the shares into which the capital is divided." The shares of the Co., whose capital consisted of 60,000 shares of £1, were to the extent of 40,000 fully paid up; on 20,000 only 5*s.* had been paid. A resolution declaring a dividend expressed that it should be paid "upon the paid-up capital of the Co.":—*Held*, upon a construction of these articles read in the light of the Companies Acts, that all dividends were to be declared according to the shares of the nominal capital held by the different members of the Co. without regard to the amount paid by them, and that the resolution was therefore inoperative. OAKBANK OIL Co. *v.* CRUM **[9 C. of S. Cas. 198 (Sc.)**

[N.B.—The above decision has been affirmed by the House of Lords. **(W. N. 1882, p. 180).**]

—— Construction—Plural words including singular.
See COMPANY—WINDING-UP. 9.

—— Directors' qualification.
See COMPANY—WINDING-UP. 5, 6.

—— Shares issued at a discount — Directors' power to dispose of.
See COMPANY—DIRECTORS. 3.

II. COMPANY—DIRECTORS—Liability of—Misrepresentations, of which directors were not actually aware, in the reports and balance-sheets, which were prepared by manager, and the balance-sheets certified by auditor as correct.—Directors held not liable, having issued the reports, &c., in good faith. LEES *v.* TOD **[9 C. of S. Cas. 807 (Sc.)**

2. —— *Liability of—Misrepresentations in Prospectus—Consideration for becoming a Director—Companies Act*, 1867 (*30 & 31 Vict. c.* 131), *s.* 38.] J., wishing to form a company to purchase mills belonging to him, subject to a mortgage for £3000 and he being indebted to a bank in £5000, contracted with S. and another to allow their names to be put forward as directors, in consideration of 150 paid-up £5 shares to S. and 100 to the other. A deed was executed between trustees for the bank (who had agreed to purchase the mortgage), J., and S. & C., as trustees for the projected Company, whereby the bank's trustees agreed to convey the mills to the Company, when formed, for £8000, to be paid by the Company's debentures; and J. was to assign to the Company all his stock-in-trade, &c., and all his interest in the mills, for 2500 paid-up shares of £5 each. The Company was formed, J. and S. being two of the directors; and the articles declared the above agreement binding on the Company, and directed the allotment of 2500 paid-up shares to J. for the purchase of the goodwill and stock-in-trade. The prospectus stated that the Company had acquired "the very valuable concern," viz., the mills, goodwill, &c., describing them, "on exceptionally favourable terms, viz., for the small sum of £8000, payable in debentures, &c., and 1000 paid-up shares, in addition to which the vendor will purchase 1500 shares fully paid-up, thus putting a cash capital of £7500 into one concern." The Company was wound up, and the Plaintiff, a shareholder, sued J. & S. for damages to him for a false representation in the prospectus as to the capital of the Company, and a suppression of the contract between J. and S. under which S. became a director. Upon the trial of issues of fact before a jury, they found that there was a contract between J. and S. that the 150 shares were to be paid out of the shares of J., and that the Plaintiff had no notice of the contract:—*Held* (1) that the statement in the prospectus as to the capital of the Company was false and fraudulent, and that J. and S. were answerable therefor to the Plaintiff.

(2) That the contract was within the above section, and the suppression of it from the prospectus fraudulent under the section.

Sullivan v. *Mitcalfe* (5 C. P. D. 455) followed.

(3) That J. and S. should pay to the Plaintiff the sum that he had paid for his shares. JURY *v.* STOKER - - **9 L. R. Ir. 385 (M. R. & C. A.)**

3. —— *Power of—Articles—Shares issued at a Discount—Companies Act*, 1862 (*25 & 26 Vict. c.* 89), *Sched.* 1, *Table A, Art.* 27—*Companies Act*, 1867 (*30 & 31 Vict. c.* 131), *s.* 25.] It was provided by the articles of association of a limited Co. that, subject to any direction to the contrary that might be given by the meeting sanctioning an increase of capital, all new shares should be offered to the members in proportion to the existing shares held by them, and in the event of any such shares having been offered and declined, the directors might dispose of the same in such manner as they might think most beneficial to the Co.:—*Held*, that under the article, which was practically identical with the corresponding clause in Table A. sched. 1, of the Companies Act, 1862, the directors had the power of disposing of shares at a discount. *Re* INCE HALL ROLLING MILLS Co. - - **30 W. R. 945**

—— Fees—Fraudulent preference.
See COMPANY—WINDING-UP. 11.

—— Qualification of.
See COMPANY—WINDING-UP. 5, 6.

III. COMPANY—REDUCTION OF CAPITAL—*Companies Act*, 1867 (*30 & 31 Vict. c.* 131), *ss.* 9,

III. COMPANY — REDUCTION OF CAPITAL — *continued.*

11, 13—*Confirmation Order—Shareholder's Title to object.*] Shareholders, alleging illegality, and an injury to their rights, have, as well as creditors, a good title to appear and object to the granting by the Court of a confirmation order sanctioning a reduction of capital, under the above sections. THARSIS SULPHUR AND COPPER CO. *v.* HOGGAN **[9 C. of S. Cas. 507 (Sc.)**

IV. COMPANY—REGISTRATION — *Association of more than Twenty Persons—Land Society—Carrying on Business for acquisition of Gain—Companies Act*, 1862 (25 *&* 26 *Vict. c.* 89), *s.* 4.] The M. & B. Freehold Land Society, an association of more than twenty persons, was constituted by deed, but not registered under the above section. The Society's object was to purchase an estate, subdivide it into allotments and roads, and divide the allotments amongst the members in accordance with the Society's rules. A committee, consisting of two trustees, a president and five other members, managed the society. The amount of payment for the services of the committee was determined by an annual meeting of the members, of whom there were in all twenty-one.

The allotments were offered by auction to the members who had executed the deed of constitution, each allotment being offered at the proportion of the first cost of the estate, and allotted to the member bidding the highest premium above such proportion of first cost:—*Held*, that the society did not need registration, not being an association "for the purpose of carrying on any . . . business that has for its object the acquisition of gain," within the meaning of the above section. WIGFIELD *v.* POTTER - **45 L. T. 612; [46 J. P. 485**

V. COMPANY—WINDING-UP—*Affidavit verifying Petition—Statement as to Belief—Companies Act*, 1862 (25 *&* 26 *Vict. c.* 89), *s.* 170—*G. O. Nov.* 1862, *r.* 4; *Sched.* 3, *Form* 2—*O. XXXVII., r.* 3.] The common affidavit by a petitioner verifying a petition (according to r. 4 and Form 2 of Sched. 3 to G. O. of Nov., 1862) is sufficient, notwithstanding O. XXXVII., r. 3; although some of the allegations in the affidavits are only as to belief, and there are other affidavits to support the petition, shewing the source of the Petitioner's belief.

Semble, the question as to whether a rule of the Order of Nov. 1862, made under the Companies Act, 1862, is *ultrà vires*, will not now be considered by the Court. *In re* NEW CALLAO **[47 L. T. 175; 30 W. R. 647 (C.A.)**

2. —— Breach of trust by director in respect of payment of dividend out of capital—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 165—Title to sue—Liquidator representing shareholders only—Lapse of time. CITY OF GLASGOW BANK (LIQUIDATORS OF) *v.* MACKINNON **9 C. of S. Cas. 535 (Sc.)**

3. —— *Calls—Notice—Companies Act*, 1862 (25 *&* 26 *Vict. c.* 89), *ss.* 101, 121.] Where the liquidators of a Co. desire an order under s. 101 of the above Act, for payment of calls made by the directors prior to the commencement of the liquidation, notice, but not necessarily formal service of such notice, is requisite. Distinction explained between s. 101 and s. 121 (which relates to Scotland only). BENHAR COAL CO. (LIQUIDATORS OF) - **9 C. of S. Cas. 763 (Sc.)**

4. —— *Contributory—Agreement to become a Shareholder—"Willingness" to take new Shares if created—Allotment.*] A Co., which was in difficulties, intimated by circular to its creditors and shareholders that to avoid immediate liquidation it was proposed to raise additional capital by the issue of new preference shares, provided that a sufficient number of the creditors agreed to postpone payment of their debts. The following schedule was enclosed to the shareholders:—"I, . . . hereby express my willingness to take . . . of the new preference shares." The circular stated that on a certain day a general meeting would be held to consider whether the shares should be created or the Co. go into liquidation. A., a shareholder, filled up the schedule for fifty new shares.

At the meeting it was decided to create the shares. A second circular was then issued, in these terms: "I, . . . hereby apply for . . . shares of the new preference stock." A. sent no reply to this circular, but the directors, notwithstanding, allotted him fifty new shares. There was a conflict of evidence as to whether he ever received an allotment letter, but it was admitted that he received, but paid no attention to, several call-letters. The Co. went into liquidation, and the liquidators entered A's name in the list of contributories in respect of the fifty shares:—*Held*, that A.'s name must be struck off the list, the answer sent to the first circular not being sufficient to bind him to become a shareholder. MASON *v.* BENHAR COAL CO. **9 C. of S. Cas. 883 [(Sc.)**

5. —— *Contributory — Director's Qualification.*] The mere fact of application for the number of shares requisite to the qualification of a director, together with the fact of having acted as a director, will not constitute a contract to take shares so as to render the applicant liable as a contributory if there has been no actual allotment.

C. & H. consented to act as directors of a Co., and attended several directors' meetings. They applied for forty and twenty-five shares respectively, or for such less number as should be allotted to them. It was provided by the articles of association that every member holding not less than twenty-five shares should be eligible as a director, and that the directors should be subscribers of the memorandum of association, together with or without any other members of the Co. as the subscribers should, by resolution, appoint. C. & H. were elected directors by resolution; but they were not subscribers of the memorandum of association, nor had any shares been allotted to them. The attempt to raise capital having failed, no shares were allotted to any one, and C. & H. withdrew their applications and retired from their directorship:—*Held*, that their names must be removed from the list of contributories, for their election as directors was void, as they were not at that time members of the Co., and there was no agreement on their part to take shares except upon allotment. *Re* ELECTRIC AND MAGNETIC

V. COMPANY—WINDING-UP—*continued.*

Co. CARMICHAEL AND HEWITT'S CASE 46 L. T. [653; 30 W. R. 742

6. —— *Contributory—Director's Qualification—Articles of Association.*] The memorandum of association of a projected company was signed by S., B., and O., who thereby agreed to take one share apiece. They signed also the articles of association, by which it was provided that they and certain others should be the first directors, that a director's qualification should be the holding of twenty-five shares, and that if at any time an existing director should cease to hold twenty-five shares his office should be vacated. The published prospectus described S., B., and O., as directors; they took part in carrying on the business of the company; acted as directors and attended the meetings of the board until the company was wound-up:—*Held*, that the qualification clause was not limited to future directors, and that S., B., and O., were therefore liable to be put on the list of contributories for twenty-five shares each.

Karuth's Case (L. R. 20 Eq. 506) followed. *Re* THE BILTON HOTEL CO. - - 9 L. R. Ir. 338

7. —— *Contributory—Prepayment of Calls—Companies Act*, 1862 (25 & 26 *Vict. c.* 89), *s.* 84.] After a petition for winding-up had been presented, but before the winding-up order was made, P., a shareholder in the Co., paid £25 to the directors in anticipation of calls. The liquidator having applied for a balance order against P. in respect of £240, calls on thirty shares held by him:—*Held*, that the £25 could not be taken as a pre-payment *pro tanto* of so much of the call made by the liquidator, but only as a loan to the Co. *Re* EXCHANGE BANKING CO. PENNINGTON'S CASE - - - - 45 L. T. 433

8. —— *Contributory—Shares partly paid-up—Vendor's Nominee—Identification of Shares—Companies Act*, 1867 (30 & 31 *Vict. c.* 131), *s.* 25.] Where a contract has been made between a Co. and a vendor to it, that the latter shall accept as a portion of the purchase-money shares issued as partly paid up, and the contract has been duly filed in accordance with the above section, the vendor's nominee is entitled to the benefit of the contract, and therefore to protection from liability on the shares to the extent to which they were agreed to be issued as paid up, although the contract did not purport to identify the shares to be allotted to such vendor, nor provide for allotment to his nominee. *Re* DOMINION OF CANADA PLUMBAGO CO. KIRBY'S CASE - - 46 L. T. 682

9. —— *Contributory—Withdrawal of Application for Shares—Power to compromise—Articles, Construction of—Plural Words including singular.*] The directors of a Co. were empowered by the articles of association to delegate their powers "to committees consisting of members of their body." The interpretation clause provided that "words importing the plural number only include the singular":—*Held*, that the directors could, under the above provisions, delegate to a single member of their body their power to compromise a claim with a shareholder.

M. having made a written application for shares in a Co. and having forwarded a deposit, a letter of allotment was posted to him, but before its receipt

V. COMPANY—WINDING-UP—*continued.*

he became aware of an altered prospectus announcing a change of directors and an alteration in the contract for purchase of the works, whereupon he wrote to withdraw his application. Subsequent negotiations took place between M. and the Co.'s chairman, who was authorized by the directors to arrange or compromise with M., the result being that an agreement was come to that M.'s name should be removed from the register. A petition to wind-up the Co. was then presented, and a few days afterwards there was a meeting of the Co. at which the directors resolved that the allotment of shares to M. should be cancelled:—*Held*, (1) that M. became a shareholder, his letter of repudiation not being received until after the letter of allotment was posted, but (2) that he was not liable to be fixed as a contributory, for a binding compromise, releasing him from his contract, had been concluded before the winding-up was begun. *Re* SCOTTISH PETROLEUM CO. MACLAGAN'S CASE [51 L. J. (Ch.) 841; 46 L. T. 880

10. —— *Forfeiture of Lease—Leave to Landlord to resume possession—Jurisdiction on Summons—Receiver—Costs*—25 & 26 *Vict. c.* 89, *s.* 163.] A lease to a company reserved to the lessor liberty, in event of the company's being "wound-up," to re-enter:—*Held*, (1) that the above section of the Companies Act, 1862, did not affect the landlord's right of re-entry under the lease; (2) that such right accrued on the commencement of the winding-up; (3) that the Court upon a summons by the landlord in the winding-up, was bound to enforce such right, and to order the liquidator to deliver up possession without waiting for an action for recovery of the land being brought; and (4) that the receiver, having been made a Respondent, but not having been guilty of personal misconduct, must be allowed his costs. *Re* WETLEY BRICK AND POTTERY CO. [30 W. R. 445 (C.A.)

11. —— *Fraudulent Preference—Advances by Directors—Directors' Fees — Misfeasance — Companies Act*, 1862, *ss.* 164, 165—*Bankruptcy Act*, 1869, *s.* 92.] The directors of a Co. were empowered by its articles to borrow on security of uncalled capital, and the articles also provided that the amount due on shares might be paid in advance of calls. The directors, in May, 1878, resolved that any advances then or thereafter made by directors for urgent claims should be paid first. G., S., and M., who were directors, had then made, and made afterwards, such advances. In June the directors borrowed on mortgage of unpaid calls and applied part of the money towards repayment of these advances. In July G., S., and M., decided to pay up their shares in full, there being then directors' fees due to them, and the amount they purported to pay up was set off against their fees and advances. In June, 1878, the Co. was in embarrassing circumstances, but it did not appear that it was then in debt, except to the directors. In January, 1879, a winding-up petition was presented by the directors, and in February the order was made. The liquidator took out a summons to compel G., S., and M., to refund the moneys so received and set off, on the ground of fraudulent preference under sect. 164 of the Com-

V. COMPANY—WINDING-UP—*continued.*

panies Act, 1862:—*Held*, (1) that under sect. 92 of the Bankruptcy Act, 1869, an Act which would otherwise be a fraudulent preference cannot be impeached, unless a bankruptcy follows in three months therefrom; (2) that s. 164 of the Companies Act refers to the law of Bankruptcy for the time being in force, and not to the law in force at the date of that Act; (3) that, therefore, there was no fraudulent preference, the winding-up not having begun within three months of the transactions complained of; and (4) that there had been no misfeasance within s. 165 of the Companies Act, 1862. *Re* LIVERPOOL AND LONDON GUARANTEE, &C., INSURANCE CO. MASON AND GALLAGHER'S CASE **46 L. T. 54; 30 W. R. 378**

12. —— *Liquidator, Liability of, carrying on Mineral Leases worked by Co.—Assignment—Adoption.*] Two mineral leases granted by the same landlord to the same tenant of different subjects in one coal-field, and for different rents and terms of duration, contained clauses excluding assignees and sub-tenants, except on condition that the tenant should remain liable for the rents, &c. The tenant assigned them to a Co., which subsequently was wound up under the supervision of the Court, the liquidators obtaining authority to work the minerals as before. Upon the refusal of the liquidators to pay the landlord the rent due under one of the leases, on the ground that they had not adopted and entered into possession of it, the minerals in it never having been wrought, the original tenant applied to have the liquidators and the Co. ordered to pay to the landlord the rents due and to become due under the lease in question:—*Held*, assuming the competency of the proceeding, that the original tenant, having merely a personal right of relief against the assignees for the rent due to the landlord, was not entitled to put forward a claim which would virtually give him a preference in the liquidation, and that the application must therefore be refused. GRAY'S TRUSTEES *v.* BENHAR COAL CO. - **9 C. of S. Cas. [225 (Sc.)**

13. —— *Liquidator, Official—Action against—Personal Liability—Injunction.*] On a motion for an injunction to restrain an action against an official liquidator personally for work done for the benefit of the estate, the Court refused the application. *Re* THE ORIGINAL HARTLEPOOL COLLIERIES CO. - **51 L. J. Ch. 508; 47 L. T. 116**

14. —— *Members—Rights* inter se*—Priorities—Companies Act*, 1862 (25 & 26 *Vict. c.* 89). *ss.* 102, 109, 133 (10).] A Co., somewhat similar in its character to a building society, was established with the object of raising money from its members by means of subscriptions, and advancing money on security to its members, and repaying to them the amounts of their subscriptions, and ultimately dividing the profits amongst the continuing members. By the articles of association it was provided that interest was payable to members on their subscriptions; members were to obtain advances on "certificates" in respect of which periodical sums were made payable, but some or all of such periodical payments were allowed to be, and in many cases in fact were, made in advance; and members were allowed to withdraw from the Co., obtaining repayment of their investments out of the premiums and returns of appropriations. The Co. went into voluntary liquidation:—*Held*, that the Co.'s net assets were, after discharge of all liabilities, to be expended, (1) as to the premiums and returns of appropriations, in repayment to members who had, before the winding-up, given notice of withdrawal; (2) as to the general fund, in the first place in paying interest due in respect of subscriptions at the date of the winding-up, and secondly, in payments to such members as had paid in advance sums on their certificates, calculated so as to equalize as far as practicable the amounts paid by certificate. *Held*, also, that, if the general fund proved insufficient to render the amounts paid per certificate equal in every case, no call could be made upon the members who had paid the least in respect of their certificates, so that an absolute equality might be established. *Re* LAND, &C., SECURITIES CO. - - - - **46 L. T. 758**

15. —— *Practice—Amendment.*] Order made in a winding-up matter to amend the name of the company in the petition and orders thereunder, without prejudice to the advertisements and proceedings in the matter. *In re* "THE CORK CONSTITUTION" - - - **9 L. R. Ir. 163**

16. —— *Practice—Discharge of Winding-up Order by Court of first instance—O. XXIX., r.* 14.] Where a Co. is ordered to be wound-up on a petition on which the petitioning creditor is the only one who appears, and the Co. afterwards pays his debt, the order for winding-up may be discharged, as being of the nature of a judgment by default, under the above rule. *Re* ASTON HULL (*or* HALL) COAL &C. CO. - **45 L. T. 676; 30 W. R. 245**

17. —— *Shareholder's Petition — Companies Act*, 1862 (25 & 26 *Vict. c.* 89), *s.* 79, *subs.* 5—"*Just and equitable.*"] A Co. formed for a special purpose had, after the accomplishment of its object, but before all the shares had been allotted as agreed upon with the vendor, a large surplus of assets. The vendor held a majority of the the shares already issued, but under the articles had only a single vote. With the view of preventing a further, and, as he said, inequitable allotment of shares which the directors were about to make, the vendor, in respect of his shares (which were fully paid up) presented a petition for a winding-up order under the above subsection:—*Held*, that as the object of the petition was to give the Petitioner an advantage in the trial of a question between himself and the other shareholders, and not to serve any company purpose, the petition must be refused. ANGLO-AMERICAN BRUSH ELECTRIC LIGHT CO. *v.* SCOTTISH BRUSH ELECTRIC LIGHT, &C., CO. **9 C. of S. Cas. 972 (Sc.)**

18. —— Voluntary liquidation under supervision of the Court—Adoption of proceedings prior to supervision order.—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 146. *Re* MOLLISON & CO. **[9 C. of S. Cas. 509 (Sc.)**

COMPANY—Assessment of, and its official liquidator, to poor-rate
See POOR-RATE. 1.

—— Power to lease to "person or persons"
See WILL—CONSTRUCTION. 24.

COMPANY—*continued.*

—— Railway
See RAILWAY.

COMPENSATION — Artizans' Dwellings Act—Ancient lights.
See LIGHT AND AIR. 1.

—— Lands Clauses Act.
See LANDS CLAUSES ACT.

COMPOSITION.
See BANKRUPTCY—COMPOSITION.

COMPULSORY PURCHASE—Artizans' Dwellings Act.
See ARTIZANS' DWELLINGS ACT.

—— Lands Clauses Act.
See LANDS CLAUSES ACT.

—— Payment out of Court of purchase-money—Motion—Costs.
See PRACTICE—COSTS. 6.

CONDITION—Repugnant—Against alienation.
See DEED. 3.

CONDITIONAL GIFT—Legacy—Testator's intention.
See WILL—CONSTRUCTION. 13.

CONDITIONS OF SALE—Agreement annexed to—"Memorandum in writing"—Name printed.
See FRAUDS, STATUTE OF. 1.

CONFESSION—Mistress and domestic servant.
See CRIMINAL LAW. 4.

CONFLICT OF LAWS—Action for death by negligence in another state, having similar law on the subject. LEONARD *v.* COLUMBIA, &c., Co.
[38 Amer. R. 491 (U.S.)

—— Conspiracy—Formed in one, carried out in another, state.
See CRIMINAL LAW. 16.

—— Contract—*Lex loci.*
See CONTRACT. 10, 11.

—— Domicil—Law of adoption.
See DOMICIL.

—— Extradition—Local venue.
See CRIMINAL LAW. 13.

CONSOLIDATION—Of actions—Conduct of action.
See PRACTICE—PARTIES. 3.

CONSPIRACY—Formed in one, carried out in another, state—Jurisdiction.
See CRIMINAL LAW. 16.

CONSTABLE—Action against—Notice of—Mistake in, as to date.
See NOTICE OF ACTION.

CONTEMPT OF COURT—*Injunction against Trustees by Name—Breach by New Trustees.*] The Defendants, who were trustees of a friendly society, were (by name) restrained by an injunction from dividing £2000 of the society's funds among its members. Soon after this the Defendant trustees retired, and new ones were appointed, who, though aware of the effect of the injunction, acting under a resolution of the society, divided the £2000 among the members, including the old trustees. On a motion for committal:—*Held*, that, on the facts, the proceedings were an attempt on the part of the society and the old and new

CONTEMPT OF COURT—*continued.*

trustees to evade the injunction, and that both the old and the new trustees were guilty of contempt. AVERY *or* AVORY *v.* ANDREWS
[51 L. J. Ch. 414; 46 L. T. 279; 30 W. R. 564

2. —— Witness—Immunity of, from service of process, whilst in attendance at trial. *In re* HEALEY - - - 38 Amer. R. 713 (U.S.)

—— Satisfaction of—Monition.
See ECCLESIASTICAL LAW. 2.

—— Undertaking given by solicitor out of Court.
See PRACTICE—ATTACHMENT OF PERSON.

CONTINGENCY—"Dying within twelve months" from testator's decease.
See WILL—CONSTRUCTION. 8.

CONTINGENT INTEREST — Maintenance, advance for, secured on.
See INFANT. 1.

CONTRACT—*Acceptance by Post.*] *Semble* (*Per* Lord Shand), that where an acceptance of an offer is alleged to have been posted, proof of that fact will not bind the offerer, unless there is also proof of receipt of the letter. MASON *v.* BENHAR COAL CO. - - - 9 C. of S. Cas. 883 (Sc.)

2. —— *Breach of — Damages — Judgment entered in Breach of Agreement—Publication in "Black List"—Evidence.*] The Plaintiff, a trader, brought an action for entering judgment against him on a bond, in breach of an agreement by the Defendant not to do so except in certain events, which had not happened; and upon the question of damages he tendered in evidence a copy of the "*Black List*" (a trade protection circular) containing an entry of the judgment:—*Held*, that such evidence was properly admitted, as the publication in the "*Black List*" was an ordinary and natural consequence of the breach of contract. BLAIR *v.* KINCH - - - 10 L. R. Ir. 234

3. —— *Breach of—Damages—"Scotch iron of best quality" — Rejection in Reasonable Time.*] A contract for the supply of cast-iron stills for certain chemical works specified that they were "all to be first-class castings of Scotch iron of best quality," &c., to be delivered by a certain date. The offerers knew the purpose to which they were to be put. After being used for six weeks defects began to appear, which ultimately rendered them useless. Notice of the defects was given to the contractors as soon as they appeared: *Held*, that, as the contractors had failed to supply stills adapted for the purpose contracted for, they were liable in damages, in respect (1) of the actual cost of new stills, and (2) of the time lost in consequence of the failure. *Observed*, that as goods furnished for a particular purpose, to be set up and used in a manufactory, or in the shape of machinery, cannot be tested without a considerable amount of use, it is sufficient if notice of defects is given to the seller within a reasonable time. FLEMING *v.* AIRDRIE IRON CO.
[9 C. of S. Cas. 473 (Sc.)

4. —— *Breach of—Liquidated Damages or Penalty—Common Law Procedure (Ir.) Act*, 1853, *ss.* 145, 146 (*corresponding with* 8 *&* 9 *Wm.* 3, *c.* 11, *s.* 8).] A tailor entered into a written agreement with his employer to the following effect:—"In consideration, &c., I agree and

CONTRACT—*continued.*

hereby bind myself, under a penalty of £300, not to violate any of the following undertakings: not to go into business in the tailoring trade, nor enter into the employment of another in said trade within twenty miles of D., for one year after leaving or being discharged from your employment: and at no time to use the name of 'M. & B.' in any form in connection with the tailoring trade, out of your actual employment." He was afterwards dismissed, and, within a month, opened a tailoring establishment in D., and described himself as "from M.'s," and as having been "foreman cutter in M.'s."

In an action for breach of the contract, no special damage was proved, and a verdict was found for the Plaintiff, with nominal damages. On motion, pursuant to leave reserved at the trial, to increase the damages to £300:—*Held*, that the sum of £300 was a penalty and not liquidated damages. In such cases, ss. 145, 146 of the C. L. Procedure Act, 1853 (Ir.) apply, and the Plaintiff cannot recover more than the actual damage shewn to have been sustained. The principle of *Magee* v. *Lavell* (L. R. 9 C. P. 107) applied.

Bonsall v. *Byrne* (Ir. R. 1 C. L. 573) observed upon. BROWNE *v.* PHILLIPS **10 L. R. Ir. 212**

5. —— *Duress—Threat of Criminal Proceedings—Promissory Notes given to enable a Composition to be paid—Debtor's Act*, 1869 (32 & 33 *Vict. c.* 62).] The Plaintiff, who was trustee in bankruptcy of C., made, by his agents, representations to the Defendants, one of whom was C.'s father, and the other C.'s uncle, that criminal charges under the Debtor's Act, 1869, could, and would, be brought against C. The Defendants thereupon gave promissory notes to the Plaintiff, in payment of an alleged purchase by them of C.'s stock-in-trade, and to enable a composition to be paid. The Defendants swore that they would not have given the promissory notes to the Plaintiff had they not believed his representations to be true.

The trustee having brought an action on the promissory notes against the Defendants:—*Held*, after a verdict for the Plaintiff, that, under O. XL., r. 10, judgment should be entered for the Defendants, on the ground that they had been induced by duress and threats of criminal proceedings to enter into the contract; and that it was not requisite that any particular charge under the Debtor's Act should have been specified, or that any ground for such a charge should have in fact existed.—*Williams* v. *Bayley* (L. R. 1 E. & I. App. 200) followed. SEEAR *v.* COHEN **[45 L. T. 589**

6. —— Forfeiture—Insurance policy—Condition for determination of, if premium not paid by certain date:—*Held*, of the essence of the contract. KLEIN *v.* INSURANCE CO. **14 Otto, 88 (U.S.)**

—— *See also* THOMPSON *v.* INSURANCE CO. **[14 Otto, 252 (U.S.)**

7. —— *Illegal — Compromise of Crime.*] Agreement by convict to deliver notes, &c., to prosecutor on condition of his signing a petition for pardon, and the granting of such petition, or a subsequent discharge on a new trial, *held* void. HAINES *v.* LEWIS - **37 Amer. R. 202 (U.S.)**

CONTRACT—*continued.*

8. —— Illegal — Public policy — Agreement to procure discontinuance of criminal proceedings, *held*, void. RHODES *v.* NEAL **37 Amer. R. [93 (U.S.)**

—— *See also* BARRON *v.* TUCKER **38 Amer. R. [684 (U.S.)**

9. —— Performance prevented by act of God—School suspended on account of small pox—*Held*, that teacher can notwithstanding recover wages. DEWEY *v.* ALPENA SCHOOL DISTRICT **[38 Amer. R. 206 (U.S.)**

10. —— Place of—Action on draft—Cause of action *held* to arise at place where draft made payable. HIBERNIA NATIONAL BANK *v.* LACOMBE **[38 Amer. R. 518 (U.S.)**

11. —— Place of delivery—Conflict of laws—*Lex loci*—Carrier—Liability of, as insurer. FAULKNER *v.* HART - **37 Amer. R. 574 (U.S.)**

—— *See also* VENDOR AND PURCHASER.

—— Between husband and wife
See HUSBAND AND WIFE—CONTRACTS BETWEEN.

—— Condition precedent—Arbitration—Extras.
See BUILDING CONTRACT.

—— Corporation — Seal — Misapplication of funds.
See CORPORATION. 1.

—— Hiring.
See BAILMENT; MASTER AND SERVANT. 1.

—— Illegal—Forged indorsement.
See BILL OF EXCHANGE. 9.

—— Sale of goods.
See SALE OF GOODS.

—— Shares—Allotment of.
See COMPANY—WINDING-UP. 4, 5, 9.

—— Specific performance of.
See SPECIFIC PERFORMANCE.

—— Statute of Frauds.
See FRAUDS, STATUTE OF.

CONTRACTOR—Damage—Building operations—Liability for.
See BUILDING.

CONTRIBUTION—Cost of co-Defendants.
See PRACTICE—COSTS. 3.

CONTRIBUTORY.
See COMPANY—WINDING-UP. 4—9.

CONTRIBUTORY DISTRICT—School attendance committee—Expenses of.
See ELEMENTARY EDUCATION ACTS. 2.

CONTRIBUTORY NEGLIGENCE.
See NEGLIGENCE.

CONVERSION—*Money directed to be invested in the Purchase of Real Estate—Lunatic becoming absolutely entitled—Transfer of Fund to credit of Lunacy Matter—Order finding the retention of the Fund as Personalty beneficial for Lunatic.*] By marriage settlement, a sum of money was vested in trustees upon trust to lay it out in the purchase of real estate, to be held upon certain trusts, under which, in the events which happened, A., as only issue of the marriage, became absolutely entitled. A., who was found a lunatic by inquisition, died intestate and unmarried.

The money had not been laid out in the pur-

CONVERSION—*continued.*

chase of real estate, but was invested on a mortgage; and, pursuant to an order in the lunacy matter, expressing that it was for the lunatic's benefit that the mortgage debt should be called in, the fund was transferred by the representatives of the mortgagor (who was also the surviving trustee of the settlement) into Court to the credit of the lunacy matter, together with other moneys admittedly personalty, and remained to the same credit unsegregated until the death of the lunatic: —*Held*, that the fund was to be treated as personal estate of the lunatic, and that upon his death it passed to his personal representative. M'DONOGH *v.* NOLAN - - **9 L. R. Ir. 262**

—— Re-conversion—Sale of mortgaged lands.
See MORTGAGE. 4.

—— Will—Gift of personalty with limitations applicable to realty only.
See WILL—CONSTRUCTION. 9.

CONVEYANCE.
See DEED; VENDOR AND PURCHASER; VOLUNTARY CONVEYANCE.

—— Execution of, under fictitious name.
See VENDOR AND PURCHASER. 2.

CONVEYANCING ACT, 1881—*Sale by Order of Court—Free from Incumbrances—Liberty to apply*—44 & 45 *Vict. c.* 41, *s.* 5.] The words of the above section are to be interpreted strictly, and an order under it for the sale of land free from incumbrance, the incumbrancer not being a party to the action, should follow the wording of the section, and, after directing payment into Court of the purchase-money, and setting apart a sufficient amount to meet the claims of the incumbrancer, should proceed to declare that thereupon any person interested should be at liberty to apply in chambers for a declaration that the land is freed from the incumbrance. DICKIN *v.* DICKIN
[30 W. R. 887

2. —— *Sale of Real Estate by Order of Court —Annuity—Mode of Sale*—44 & 45 *Vict. c.* 41, *s.* 5.] Where realty, forming part of an estate which is being administered by the Court, is charged with an annuity, the Court will not, upon further consideration, under the above section, direct the property to be sold free from the annuity, but will direct an application as to the mode of sale to be made in chambers. PATCHING *v.* BULL - - **46 L. T. 227; 30 W. R. 244**

—— Executor—Delay of, in bringing action.
See EXECUTOR—ACTIONS. 4.

—— Forfeiture of renewable lease — Relief against.
See FORFEITURE.

—— Power of appointment—Release of.
See POWER OF APPOINTMENT. 1.

—— Restraint on anticipation—Binding wife's interest.
See HUSBAND AND WIFE—WIFE'S PROPERTY. 2, 3; SETTLED ESTATES ACT. 5.

—— Sale in foreclosure action.
See MORTGAGE. 6, 7.

—— Trustee—Appointment of new.
See TRUSTEE. 2.

COPYRIGHT—*Reproduction of Picture in Chromo*

COPYRIGHT—*continued.*

—Licence to re-produce Imitation of Picture—Assignee of Copyright—25 & 26 *Vict. c.* 68—*Registration of Licence.*] The duly registered assignees of the copyright in a picture sold to the Plaintiff the sole right of reproduction in chromo-lithography for two years. This agreement was unregistered.

The Defendant, during the two years, published the same subject by chromo-lithography, not directly copying the Plaintiff's chromo, but independently of it. The Plaintiff's chromo-lithograph plate was not engraved with the name of the proprietor or the date of publication, as required by s. 14 of 15 & 16 Vict. c. 12.

The Defendant contended that the Plaintiff could not recover damages from the Defendant for pirating the Plaintiff's copyright, because (1) the Plaintiff's chromo was not duly engraved; and (2) there was no registration of the assignment to the Plaintiff within 25 & 26 Vict. c. 68: —*Held*, by Mathew, J., (1) that the copyright in the original picture had been violated by the production of the Defendant's chromo, which was not merely an imitation of the Plaintiff's; and (2) that the Plaintiff was not an assignee of the copyright within the Act, but a licensee to produce an imitation of the picture, so that registration of his licence was unnecessary. TUCK *v.* CANTON
[51 L. J. Q. B. 363

CORPORATION—*Contract by—Seal, Absence of —Misapplication of Funds—Certiorari*—1 *Vict. c.* 78, *s.* 44—*Public Health Act*, 1875 (38 & 39 *Vict. c.* 55), *s.* 174.] A corporation passed a resolution ordering the payment of certain sums, each over £50, to contractors for costs incurred in paving a street, no contracts having been entered into under the corporation's seal. On an application for a *certiorari* to bring up and quash such resolution on the ground that it was a "misapplication" of the borough funds within 1 Vict. c. 78, s. 44:—*Held*, that there had not been any "misapplication," as the work was useful and done at a reasonable cost, and there was no suggestion of corruption or partiality. The Court, therefore, in the exercise of its discretion, refused to grant a *certiorari*. REG. *v.* NORWICH (MAYOR OF)
[30 W. R. 752

2. —— *Debentures issued under Statutory Powers—Construction—Right of Holder to require Payment of Principal Money on demand*—26 *Geo.* 3, *c.* 19 (*Ir.*), *s.* 73—30 *Geo.* 3, *c.* 25 (*Ir.*), *s.* 1 *—Accidental Destruction of Security—Indemnity —Costs.*] A corporation had statutory power to raise upon debentures advances at £4 per cent. interest, to be payable half-yearly until such time as the principal money should be paid off at one entire payment, and it was declared that all rates or duties arising to such corporation should be subject to the payment of such interest. The corporation accordingly issued debentures, which followed the terms of the Act of Parliament, charging the rates, duties, and revenues at their control with payment of the interest half-yearly, on certain gale days, but not mentioning any date for payment of the principal. Five of these bonds were destroyed in a fire which occurred accidentally in the owner's residence. The corporation paid interest for twenty years on the debentures.

CORPORATION—*continued.*

No claim to the debentures had been made by any other party, notwithstanding the publication of advertisements:—*Held*, that the owner of the debentures was entitled to require payment of the principal money thereby secured. *Held*, also, that, as the Defendants contested the claim not merely on account of the loss of the debentures, but on the ground that the Plaintiff could require payment only of interest, they should pay the costs of the action. WALSH *v.* DUBLIN PORT AND DOCKS BOARD - - - **7 L. R. Ir. 533**

—— *See* also COMPANY.

—— Action against—Joinder of individual members—Costs.
See PRACTICE—COSTS. 4.

—— Power to lease to "person or persons"—Limited company.
See WILL—CONSTRUCTION. 24.

CORRUPT PRACTICES — Municipal election — Special case.
See MUNICIPAL CORPORATION.

—— Prosecution for penalties—Wilful delay.
See PARLIAMENT. 1.

COSTS.
See PRACTICE—COSTS.

—— Bill of—Taxation.
See SOLICITOR. 1—5.

COUNSEL—Signature of—Application for advice of Court.
See PRACTICE—ADVICE OF COURT.

COUNTERCLAIM—Ship—Damage action against—Bail.
See PRACTICE—ADMIRALTY. 1.

COUNTY COURT—*Costs—Charges in "Conduct of a Suit"—Business done out of Court—Scale of Costs*, 1875—*County Courts Act*, 1856 (19 & 20 *Vict. c.* 108), *s.* 36—38 & 39 *Vict. c.* 50, *s.* 8.] The words "conduct of such suit" in s. 36 of the County Courts Act, 1856, do not include work done out of Court before the commencement and after the end of a suit. DRUIFF *v.* JOEL
[51 L. J. Q. B. 490

2 —— *Signing Judgment—Action ordered to be tried in County Court—Certificate of Registrar* —19 & 20 *Vict. c.* 108, *s.* 26.] Where, under the above section, an action begun in the High Court is ordered to be tried in a County Court, and, after the trial, the County Court Registrar certifies the result to the master's office, judgment may be signed in accordance with such certificate, without a summons for an order to sign judgment being taken out.—*Scutt* v. *Freeman* (2 Q. B. D. 177) approved. JOHNSON *v.* WILSON
[46 L. T. 647 (C.A.)

—— Action remitted to, for trial—New trial.
See PRACTICE—APPEAL. 1.

—— Action—Unqualified person acting as solicitor—Claim by, for services.
See SOLICITOR. 11.

—— Rule of, to appoint high bailiff receiver and manager.
See BANKRUPTCY—RECEIVER.

COUNTY FRANCHISE—Rent-charge.
See PARLIAMENT. 2.

COVENANT — *Construction—Proprietary Chapel —Lease of—"Regular Clergyman."*] In 1801 the Plaintiffs, who owned a proprietary chapel, granted a lease thereof to B., who thereby covenanted not to "permit or suffer any clergyman or person to officiate in the said chapel or perform public divine service therein, but such as shall be a regular clergyman of the Church of England." The lease was afterwards assigned to the Defendants G. & F., who allowed the Defendant D. to preach and perform divine service in the chapel. D. was a clergyman of the Church of England, whom the bishop of the diocese in which the chapel was situated had inhibited from performing divine service in his diocese. The vicar of the parish had not consented to the performance by D. of service in the chapel:—*Held* (affirming the decision of Chitty, J.), that "regular clergyman" meant a person who could officiate in the chapel without being guilty of irregularity, and that, as it was irregular of D. to perform divine service in defiance of the inhibition and without the consent of the vicar, D. was not a "regular clergyman," and must be restrained by injunction from officiating in the chapel. FOUNDLING HOSPITAL (GOVERNORS OF) *v.* GARRETT
[47 L. T. 230 (C.A.)

2. —— *Construction.*] Words of proviso or condition may be construed as words of covenant, if such be the apparent intent of parties, but covenant will not arise unless from the whole instrument an agreement to do or not to do a certain act can be collected. HALE *v* FINCH
[14 Otto, 261 (U.S.)

3. —— *Restrictive — Building Estate — Non-enforcement by Trustees against Purchasers other than Defendant—Immaterial Deviation on part of Plaintiff.*] An estate having been sold in building plots to various purchasers, they all executed a deed of covenant, each purchaser covenanting with the trustees of the estate with respect to the plot purchased by him, to observe certain stipulations as to the number of houses to be built on the plots, the building lines, &c. The Plaintiff was owner of certain of these plots, on which a house had been erected and grounds laid out by his predecessor. The Defendant had contracted for the purchase of some adjoining plots, on which he had begun to build more houses than were allowed by the deed of covenant, and in a position varying from the building line thereby prescribed. The houses so built would overlook the Plaintiff's grounds somewhat more than if built according to the prescribed line. The Plaintiff claimed an injunction, and the Defendant pleaded that in several other instances the original vendors, who were trustees under the deed of covenant for all the purchasers, had permitted, without interference, several breaches of the covenants, and that they were therefore not entitled to enforce the covenants against the Defendant; and that the Plaintiff, as claiming under them, could be in no better position. It also appeared that the Plaintiff's own house was built two feet in advance of the building line:—*Held*, that the breaches of the covenant permitted by the trustees could not be set up against the Plaintiff, as they were committed in relation to other portions of the property, not affecting the Plaintiff's enjoyment of his

COVENANT—*continued.*

plots:—*Held*, also, that the deviation from the building line of the Plaintiff's house was too slight and immaterial to affect his rights. JACKSON *v.* WINNIFRITH - - - **47 L. T. 243**

—— Against sub-letting—To leave hay, &c., on premises.
See LANDLORD AND TENANT. 1.

—— Lease—Breach—Bankruptcy of tenant.
See BANKRUPTCY—DISCLAIMER.

—— Not to use building for certain purposes—Breach threatened.
See INJUNCTION.

—— To repair—Destruction of premises by fire.
See LANDLORD AND TENANT. 5.

—— To repair—Evidence of performance.
See VENDOR AND PURCHASER. 1.

CRIMINAL LAW—*Arson—Setting fire to Contents of Building, so that, if Building were thereby fired, the Offence would be a Felony*—24 & 25 *Vict. c.* 97, *s.* 7.] Whilst a servant girl was under a month's notice to leave, a sheet was found burning on a chair in front of, but four feet from, the kitchen fire, the girl being in the kitchen, but not being able, or willing, to give any account of the occurrence. Later in the same day her apron was on fire, although it was hanging on the kitchen wall, ten feet away from the fire. At 5 P.M. there was a third fire, and again, at 7 P.M., the bed, &c., in the nursery were on fire, the girl being there at the time. No part of the house was burnt:—*Held*, that the above facts did not constitute a felony under 24 & 25 Vict. c. 97, s. 7. If a person maliciously, with intent to injure another by merely burning his goods, sets fire to such goods in his house, that does not amount to a felony under the above section, even although the house catches fire, unless the circumstances are such as to shew that the person setting fire to the goods knew that by so doing he would probably cause the house also to take fire, and was reckless whether it did so or not. REG. *v.* NATTRASS **15 Cox, C. C. 73**

2. —— *Arson—Setting fire to Picture Frame in a House, and so setting fire to Flooring—Intent*—24 & 25 *Vict. c.* 97, *s.* 7.] The prisoner was charged (under the above section) with having maliciously set fire to a picture frame in a building under such circumstances, that if the building were thereby set fire to would amount to a felony.

The jury found that the prisoner did not set fire to the house apart from the frame; that he did set fire to the frame; that the probable result would be setting fire to the floor of the house; that he did not intend to set fire to the house; that he was not aware that what he did would probably set fire to the house, and so injure the owner; and that he was not reckless or indifferent whether or not the house was set fire to. Hawkins, J., directed, upon these findings, a verdict of Not Guilty. REG. *v.* HARRIS AND ATKINS
[15 Cox, C. C. 75

3. —— *Evidence.*] Accomplice, uncorroborated testimony of—Conviction may be had upon—Discretion of Court. COLLINS *v.* PEOPLE
[38 Amer. R. 105 (U.S.)

4. —— *Evidence—Confession—Mistress and Domestic Servant.*] The prisoner, a domestic servant, whilst in custody of a policeman on a charge of arson, said to her mistress: "If you forgive me I will tell you the truth." The mistress answered, "Ann, did you do it?" The prisoner then made a statement:—*Held*, that the statement so made was not admissible against the prisoner. REG *v.* MANSFIELD **14 Cox, C. C. 639**

5. —— *Evidence—Dying Declarations.*] A statement made behind the prisoner's back is inadmissible in evidence as a dying declaration unless the person who makes it entertains at the time a settled hopeless expectation of immediate death.

Affirmative answers to such questions as "Do you think you are in bodily danger, and in fear of death?" "You are not expecting to recover; are you aware that you will die?" "Do you fully and clearly understand what I am saying to you?" and the use of the expression "I am sure I am going to die," do not indicate such a state of mind. REG *v.* OSMAN - - **15 Cox, C. C. 1**

6. —— *Evidence — Dying Declarations.*] Shortly after the event which resulted in the death of the deceased, she was seen standing near a neighbour's door in a fainting, and apparently dying, condition. She then said, "I am dying; look to my children," and made a statement as to the cause of her injuries:—*Held*, by Hawkins, J., after consulting Baggallay, L.J., that such statement was admissible, as a dying declaration, in evidence. REG. *v.* GODDARD
[15 Cox, C. C. 7

7. —— *Evidence.*] Photograph shewing condition of child alleged to have been neglected, *held* admissible. COWLEY *v.* PEOPLE
[38 Amer. R. 464 (U.S.)

8. —— *Evidence—Rape.*] Particulars of complaint of prosecutrix to third persons not admissible as evidence in chief. OLESON *v.* STATE
[38 Amer. R. 366 (U.S.)

9. —— *Evidence—Res gestæ.*] Antecedent declarations of deceased, made after agreement by him to fight with prisoner, and before the time when the fight takes place. COX *v.* STATE
[37 Amer. R. 76 (U.S.)

10. —— *Evidence — Res gestæ — Murder.*] Declaration of victim shortly before act which caused his death, *held* admissible. MEANS *v.* STATE
[38 Amer. R. 640 (U.S.)

11. —— *Evidence—Uttering Forged Instruments — Guilty Knowledge — Evidence of other Forgeries — Connection with Prisoner.*] The prisoner, a stamp distributor of the Queen's Bench Division, was indicted for uttering law forms with forged stamps. The forms were those of the Exchequer Division. In the process of stamping a second sheet is sometimes inadvertently placed under that brought into contact with the die, and receives a faint impression, distinguishable from that made on the outer sheet. These second sheets are termed "blinds," and are not genuine stamps. The defence was that when the prisoner sent to purchase genuine stamps at the Custom House, his messenger brought back these "blinds," which the prisoner innocently sold as genuine. The counsel for the Crown tendered in evidence several documents from the files of the Queen's

CRIMINAL LAW—*continued.*

Bench Division, which were on forms headed with the printed device used on the prisoner's forms, and the date-stamps on which were proved by an expert to have been made with the same instrument as the forged stamps on the documents the subject of the indictment In the prisoner's office implements suitable for forging such stamps were found:—*Held* (*diss.* Fitzgerald, B, and Barry, J.), that these documents were rightly submitted to the jury as evidence of guilty knowledge in uttering the stamped instruments which were the subject-matter of the indictment, for there was sufficient evidence to connect the prisoner with the documents, and of their having been uttered by him. REG *v.* COLCLOUGH - - **10 L. R. Ir. 241 (C.C.R.)**

12. —— Extortion—Corrupt intent essential to constitute—Such intent sufficiently charged by use of word "extorsively." LEEMAN *v.* STATE **[37 Amer. R. 44 (U.S.)**

—— *See also* COBBEY *v.* BURKS **38 Amer. R. 364 [(U.S.)**

13. —— *Extradition — Foreign Warrant — Crime sufficiently stated—Goods obtained by False Pretences sent from one Country to Another—English Law of Local Venue—Extradition Act*, 1870 (33 *&* 34 *Vict. c.* 52.] The prisoners, J. and H., were charged with conspiring together in Amsterdam, in the jurisdiction of the Government of Holland, to obtain goods by false pretences from a firm in M., in the jurisdiction of the Government of Germany. They wrote letters (containing the false pretences) from Amsterdam to the firm in Germany, ordering goods to be sent to them in Amsterdam; they also verbally (with similar false pretences) ordered the same goods from the firm's agent, who called on them in Amsterdam. The goods ordered were despatched from M., and on their receipt the prisoners forwarded them to England, whither they themselves soon afterwards absconded, and where they were arrested at the request of the Government of Germany.

The warrant of arrest described the prisoners as "suspected of fraud, by having, &c." On the application for their discharge, it was contended that the warrant was bad for insufficiency, and that the offence, if any, had been committed in Holland, and not in Germany, so that they ought not to be delivered up to the latter Government:—*Held*, that the warrant was sufficient, and did not require the offence to be set out so as to strictly satisfy the English definition of the crime alleged; but was enough if it purported to be a judicial document issued by a Court of competent authority ordering the arrest of a fugitive criminal:—*Held*, also, that the English law of local venue in criminal matters ought not to be applied to the extradition of fugitive criminals where the offence is one continuous transaction committed partly in one, and partly in another, country. REG. *v.* JACOBI AND HILLER - - - - **46 L. T. 595, n.**

14. —— *False Pretences — Existing Fact—Evidence.*] The prisoner, by representing that he was collecting information for a new County Directory, which was being got up by W. & Co., and that by paying one shilling the prosecutor could have his name inserted in large type, &c., obtained from him a subscription. The prisoner was not in fact employed by W. & Co. (if such a firm really existed), nor were they getting up a new County Directory. The prisoner's defence before the magistrates (in evidence at the trial) was, that he was himself going to bring out a directory, and that he was not aware he did wrong in using the name of W. & Co. At the trial it was urged by the prisoner's counsel that there was no misrepresentation of any existing fact, but only a promise to do something in the future:—*Held*, that this was a misrepresentation of an existing fact sufficient to sustain an indictment for obtaining money by false pretences. REG. *v.* SPEED - **46 L. T. 174; 46 J. P. 451; [15 Cox, C. C. 24 (C.C.R.)**

15. —— *Gaming—Winning at Tossing with Coins by Fraud and Ill Practice—"Game, Sport, Pastime, or Exercise"*—8 *&* 9 *Vict. c.* 109, *s.* 17.] The prisoners were indicted under the above section and were convicted of obtaining by fraud and unlawful device and ill-practice in playing at a certain game or sport, to wit, in and by wagering on the event of a certain game or sport, a watch and other things from the prosecutor. It appeared from the evidence that the prisoners induced the prosecutor to go to a public-house and drink and toss for wagers with one of the prisoners, the result being that the prosecutor lost, and the prisoners took away from him the property mentioned in the indictment:—*Held*, that this was, if not a "game," a "sport, pastime, or exercise" within the above statute. REG. *v.* O'CONNOR AND BROWN **45 L. T. 512; 46 J. P. 214; 15 Cox, C. C. 3 [(C. C. R.)**

16. —— Jurisdiction — Conspiracy to forge documents formed in one state and carried out by agent in another state:—*Held*, that former state has jurisdiction over the offence. *Ex parte* ROGERS - - **38 Amer. R. 654 (U.S.)**

17. —— Manslaughter—Homicide by police officer in unlawful arrest is at least manslaughter. O'CONNOR *v.* STATE - **37 Amer. R. 58 (U.S.)**

18. —— Nuisance—Indictment for—Permanent fruit stand materially encroaching on pavement:—*Held*, a public nuisance. STATE *v.* BERDETTA - - - **38 Amer. R. 117 (U.S.)**

19. —— *Practice — Pleading — Counts for stealing at Common Law and under Statute —* Autrefois Acquit.] The prisoners were charged, in one indictment, with larceny at Common Law and with feloniously receiving "the goods aforesaid." They were acquitted on the ground that the alleged goods were a fixture in a building.

They were then charged upon a second indictment under 24 & 25 Vict. c. 96, s. 31, for stealing the fixture, and to this charge they pleaded *autrefois acquit.*

The chairman at Quarter Sessions held that this plea was not proved, and the prisoners thereupon pleaded not guilty, but were convicted:—*Held*, that the prisoners had not been in peril on the count for receiving in the first indictment, and that the chairman's ruling was right. REG. *v.* O BRIEN **46 L. T. 177; 15 Cox, C. C. 28 (C. C. R.)**

CRIMINAL LAW—*continued.*

20. —— *Witness—Postponement of Case—Infectious Witness.*] Case of burglary postponed on ground that infection might be conveyed to the public by the attendance of the witnesses, who were suffering from small pox, though not "unable to travel" within s. 17 of 11 & 12 Vict. c. 42. REG. *v.* TAYLOR - - - **15 Cox, C. C. 8**

—— Forgery of indorsement—Promise by person whose name is forged to pay.
See BILL OF EXCHANGE. 9.

—— Forgery of name of one maker of joint note.
See BILL OF EXCHANGE. 12.

—— Sureties to be of good behaviour—Jurisdiction of justices.
See JUSTICE OF THE PEACE. 3, 4.

—— Unlawful assembly—Authority of justice to disperse.
See JUSTICE OF THE PEACE. 1.

CROWN—Patent from—Construction.
See FORESHORE.

CUMULATIVE GIFTS—Legacies to same persons by different instruments.
See WILL—CONSTRUCTION. 14, 15.

CUSTOM—*Office—Tenure of—Remembrancer of City of London.*] In 1878 the Plaintiff was elected by the Court of Common Council to the office of Remembrancer of the City of London, and was afterwards sworn in before the Court of Aldermen. The Lord Mayor, previous to the Plaintiff's taking the oath, made a declaration that his election was under the terms of a standing order of the Court of Common Council, that the office should be held subject to annual election, and the election was entered upon the City records as having been made upon such terms. In 1881 the Court of Common Council passed a resolution that the Plaintiff be not re-elected remembrancer, and that the office be declared vacant. The Plaintiff thereupon brought this action for a declaration that he was still Remembrancer, and an injunction to restrain the corporation from appointing anyone in his place, on the ground that the office had by usage acquired the nature of freehold and that the Court of Common Council had no power by resolution or by the form of election to alter the tenure of the office. It appeared that a Remembrancer was for the first time appointed *eo nomine* in 1570, by act of the Common Council. From that year Remembrancers were regularly appointed to hold office, sometimes during good behaviour, sometimes during the pleasure of the Court of Aldermen. In 1816 the Court of Common Council passed a resolution that every person who might be elected to any office in the gift of that Court should be elected for a year only. The subsequent appointments were expressed upon the records to have been made subject to this standing order. Some form of annual re-election was gone through at the beginning of every year in the case of the remembrancership and some of the other offices included in the standing order:—*Held*, that, if the office were for life, the election for a smaller period would be altogether void, and not merely as to the limitation; but that, as the form of appointment had varied, there was no continual usage sufficient to establish that the office was of any particular tenure; and further that, if there

CUSTOM—*continued.*

were such usage, it was as strongly in favour of the tenure being during the will of the corporation as during good behaviour; and that the resolution passed by the Court of Common Council was a sufficient determination of such will. ROBARTS *v.* LONDON (MAYOR OF) **46 L. T. 623; 30 W. R. 637**

—— Lloyd's—Payment of policy in London only.
See INSURANCE—MARINE. 3.

—— Measurement of cargo—Charterparty.
See SHIP. 3.

—— Stock Exchange—Broker—Bought note.
See TRUSTEE. 6.

—— Trade—Practice of average adjusters.
See INSURANCE—MARINE. 2.

D.

DAMAGE—Building operations—Contractor.
See BUILDING.

—— Dangerous animal.
See DANGEROUS ANIMAL.

—— Remoteness—Breach of agreement—Evidence.
See CONTRACT. 2.

DAMAGES—Appeal as to amount of—Stay of proceedings pending.
See PRACTICE—STAYING PROCEEDINGS.

—— Breach of contract—Goods furnished for specified purpose.
See CONTRACT. 3.

—— Seduction—Means of defendant.
See SEDUCTION.

—— Specific performance in lieu of—Undertaking to erect siding.
See SPECIFIC PERFORMANCE.

——Unliquidated—Disclaimer of lease.
See BANKRUPTCY—PROOF. 2.

—— Wrongful severance and sale of coal.
See MINES. 3.

DAMAGES, MEASURE OF—Negligence producing permanent disability—Rule for calculating damages. HOUSTON, &C. RAILROAD CO. *v.* WILLIE **[37 Amer. R. 756 (U.S.)**

DANGEROUS ANIMAL—*Boar—Precautions for Public Safety.*] The owner of a boar is bound to secure it, and is responsible for any damage that may result from his precautions proving inadequate. HENNIGAN *v.* MCVEY **[9 C. of S. Cas. 411 (Sc.)**

DEATH—Party to action.
See PRACTICE—PARTIES. 1, 5.

DEBENTURE HOLDERS—Right of, to require payment of principal on demand.
See CORPORATION. 2.

DEBENTURE STOCK—Power to invest in—Guaranteed railway stock.
See WILL—INVESTMENT CLAUSE.

—— Transfer of—Registration—Gift.
See VOLUNTARY CONVEYANCE. 2.

DEBT—Assignment of.
See ASSIGNMENT OF DEBT.

DECLARATION OF TRUST — Gift of stock—Clause of revocation.
See VOLUNTARY CONVEYANCE. 2.

DEDICATION OF SOIL—Right to expose goods in front of shop.
See LOCAL GOVERNMENT.

DEED—*Construction—General Words—"Yards."*] Parcels were described in a conveyance by reference to a plan and colours. A yard, which was delineated in the plan, but not coloured, was held to pass under the word "yards," which was used in the general words. WILLIS *v.* WATNEY - - **51 L. J. Ch. 181; 45 L. T. 739; [30 W. R. 424**

2. —— *Release—Inspectorship Deed—Void or voidable—Estoppel.*] A debtor, by a deed of inspectorship and composition, made between him and his creditors in Great Britain, covenanted that in a certain event he would, if required by the inspector, assign to him all his (the debtor's) property for his creditors' benefit; that upon such assignment the inspector should give a certificate that the debtor had so assigned, and that thereupon the debtor should be released from his debts. There was also in the deed a proviso that it should "cease, determine, and be void" if all the creditors in Great Britain to a certain amount did not execute it within six months from the date thereof. The debtor, having been duly required by the inspector to execute an assignment, did so, and received a certificate:—*Held*, that the deed was voidable only, and not void, that the release constituted a good defence against a creditor who had executed it, and who, having had notice that all the creditors had not signed the deed, had endeavoured to obtain payment of a dividend out of the property assigned to the inspector. *Semble*, a creditor who had executed the deed could not take advantage of the proviso, which was for the debtor's benefit. DUNN *v.* WYMAN **51 L. J. Q. B. 623**

3. —— Repugnant condition—In deed granting life-estate to one, remainder in fee to his children, a condition against alienation by grantee or sale for his debts is void. MCCLEARY *v.* ELLIS **[37 Amer. R. 205 (U.S.)**

—— Rectification of — Insertion of hotch-pot clause—Form of order.
See POWER OF APPOINTMENT. 2.

—— Setting aside—Purchase by trustee from *cestui qui trust.*
See SETTING ASIDE DEED.

—— Title—Right to possession of, as between trustee and heir-at-law.
See TRUSTEE. 9.

DEFAMATION—*Libel—Innuendo — Relevancy.*] The Plaintiff, a minister of the Church of Scotland, brought an action against the Defendant for an alleged libel contained in a letter written by him to a newspaper. The letter accused the Plaintiff of neglecting his duty by absenting himself from his charge for six of the busiest weeks of the year, during which the church was closed, and concluded by expressing a hope that the presbytery would "do their duty, and not allow this part of their vineyard to be neglected, and call him to account. If not, the synod will be duly acquainted with the present and past behaviour of the rev. gentleman." The Plaintiff

DEFAMATION—*continued.*

did not allege that the statements of fact in the letter were false, but averred:—"By the said letter, and especially by the last sentence thereof, the Defendant falsely, calumniously, and maliciously represented and insinuated that the Plaintiff had, in violation of his duty as a parish minister, neglected his parishioners and congregation, and had, both in the past and at the date of the said letter, behaved in a manner unbecoming a minister of the Gospel, and deserving of the admonition or censure of the Ecclesiastical Courts." —*Held*, that, in the absence of any denial on record of the truth of the statements of fact in the letter, the Plaintiff's averments were not relevant, and the action must be dismissed. CAMPBELL *v.* FERGUSON - - - **9 C. of S. Cas. 467 (Sc.)**

2. —— *Slander—Privilege—Malice—Probable Cause.*] A crossed cheque with a forged indorsement was presented at a bank, and was cashed by G. (the bank agent), who thought he recognized the person presenting it as L., the servant of the customer whose name G. understood to be indorsed on it. The indorsement was unlike the customer's usual signature.

On discovering the forgery, G. went to the customer and said he believed L. was the person who presented the cheque. G. then gave information to the police, and L. was in consequence put on his trial, but the charge against him was found "not proven." L. thereupon brought an action for damages against G., and the jury found for the Plaintiff. On motion for new trial, *Held*, that there was no evidence of malice and want of probable cause, and that the verdict must therefore be set aside. LIGHTBODY *v.* GORDON **[9 C. of S. Cas. 934 (Sc.)**

—— Libel, action for—Pleading—General denial.
See PRACTICE—PLEADING. 3.

DEFENCE, STATEMENT OF.
See PRACTICE—PLEADING. 2, 3, 6.

DELAY—Mistake in order for taxation of bill of costs.
See SOLICITOR. 4.

—— Setting aside award.
See ARBITRATION. 2.

—— Wilful, in prosecution for penalties for bribery.
See PARLIAMENT. 1.

DELIVERY—Symbolical—Specific bulky articles.
See FRAUDS, STATUTE OF. 2.

DEMURRAGE—Charterparty—Lien for freight.
See SHIP. 1.

DEMURRER.
See PRACTICE—PLEADING. 4, 5.

DEPOSIT—Authority of solicitor to receive, on sale by Court.
See PARTNERSHIP. 4.

—— Deeds — Solicitor and client — Partnership action.
See PARTNERSHIP. 1.

—— Title-deeds — Subsequent conveyance for value—Priority.
See MORTGAGE. 3.

DEPOSITIONS—Removal from file.
See EVIDENCE. 2, 3.

DEPRIVATION—Sentence of—Prohibition.
See ECCLESIASTICAL LAW. 1.

DEROGATION FROM GRANT—Easements necessary to complete building scheme.
See LIGHT AND AIR. 3.

DETINUE—*Bailment—Demand.*] An action of detinue does not lie against a bailee of goods until demand made by the bailor after the determination of the bailment and before action brought. CULLEN *v.* BARCLAY
[10 L. R. Ir. 224 (C. A.)

DEVIATION—Salvage—Apportionment.
See SHIP. 12.

DEVISE.
See WILL.

DIRECTOR.
See COMPANY—DIRECTORS.

DISCLAIMER—Bankruptcy.
See BANKRUPTCY—DISCLAIMER.

DISCONTINUANCE—Of action, as against some of several Defendants.
See PRACTICE—DISCONTINUANCE.

DISCOVERY.
See PRACTICE—DISCOVERY.

DISCRETION—Court—Costs—Depriving successful party of.
See PRACTICE—COSTS. 7.

—— Court—Documents—Place of production.
See PRACTICE—DISCOVERY—DOCUMENTS. 4.

—— Court—Salvage—Award of.
See SHIP. 12.

—— Judge at chambers—Notice of trial—Extension of time.
See PRACTICE—TRIAL. 2.

—— Trustee in bankruptcy—Sale of contingent interest.
See BANKRUPTCY—TRUSTEE. 1.

—— Trustee's—Interference by Court.
See WILL—CONSTRUCTION. 1.

DISMISSAL—Of servant—Notice.
See MASTER AND SERVANT. 1.

DISTRESS—After tenant's bankruptcy—Lease disclaimed by trustee.
See BANKRUPTCY—DISCLAIMER.

—— Company—Poor-rate—Liability of liquidator.
See POOR-RATE. 1.

—— Under attornment clause—Validity of.
See MORTGAGE. 2.

DISTRESS WARRANT—Costs of.
See ELEMENTARY EDUCATION ACTS. 3.

DIVORCE.
See HUSBAND AND WIFE—DIVORCE.

—— Practice.
See PRACTICE—DIVORCE.

DOCUMENTS—Production of.
See PRACTICE—DISCOVERY—DOCUMENTS.

DOMICIL.—A child having been adopted according to the law of, and therefore entitled to inherit realty in, one state; having with its adopted father become resident in another state, where similar laws of adoption prevail, may inherit realty in such other state, although the wife

DOMICIL—*continued.*
has given no formal consent to the adoption as required by the latter state. N.B.—Numerous English cases on domicil are cited. ROSS *v.* ROSS
[37 Amer. R. 321 (U.S.)

—— Foreign—Jurisdiction in divorce proceedings.
See HUSBAND AND WIFE—DIVORCE. 2.

—— Jurisdiction of Probate Court—No assets within.
See WILL—PROBATE. 2.

DONATIO MORTIS CAUSÂ—Pleading—Demurrer.
See PRACTICE—PLEADING. 4.

DRAIN—Prescription—License—Obstruction.
See EASEMENT. 1.

DURESS—Threat of criminal proceedings.
See CONTRACT. 5.

DYING DECLARATION.
See CRIMINAL LAW. 5, 6.

E.

EASEMENT—Drainage—License—Prescription—Obstruction after twenty years' enjoyment, on a larger drain being substituted. WISEMAN *v.* LUCKSINGER - - - **38 Amer. R. 479 (U.S.)**

2. —— *Highway—Support of, by Wall—Liability of Owner of Wall to repair.*] An action was brought by a Highway Board to recover the expense they had incurred in repairing a wall supporting a highway, which wall they alleged belonged to the Defendant, and which he was bound to repair. The wall had been built by a predecessor in title of the Defendant, and belonged to him:—*Held*, that though the Plaintiffs had acquired a right to the support of the wall the Defendant was not obliged to repair it, and the expenses incurred by the Plaintiffs could not be recovered by them. STOCKPORT AND HYDE DIVISION OF MACCLESFIELD HIGHWAY BOARD *v.* GRANT - **51 L. J. Q. B. 357; [46 L. T. 388; 46 J. P. 437**

—— Light and air
See LIGHT AND AIR.

—— Support, adjacent—Implied reservation.
See SUPPORT.

—— Watercourse.
See WATER AND WATERCOURSES.

ECCLESIASTICAL LAW—*Jurisdiction—Deprivation, Sentence of—Prohibition—Interlocutory Order—Definitive Decree—Palace of Westminster—Peculiar—Royal Residence—Church Discipline Act*, 1840 (3 & 4 *Vict. c.* 86,—6 & 7 *Will.* 4, *c.* 77—3 & 4 *Vict. c.* 113.] An order, conditional upon the filing of an affidavit, was made by Lord Penzance, in a suit against an incumbent for certain ecclesiastical offences, on the 9th March, 1878, suspending the Defendant. On the 23rd March, the affidavit having then been filed, an order was made by Lord Penzance suspending the Defendant. In a subsequent suit against the Defendant for certain offences connected with ritual, and for contumacious disobedience to the last-mentioned order, Lord Penzance, sitting in Committee

ECCLESIASTICAL LAW—*continued.*

Room E of the House of Lords, pronounced sentence depriving the Defendant of his cure. Upon a motion to make absolute a rule *nisi* for a prohibition against enforcing the sentence upon the grounds (1) that the sentence was void, having been pronounced for a number of offences, one of which was disobedience to the order of the 29th March, 1878, which order was void, having been made in pursuance of the order of the 9th March, 1878, which was described as an interlocutory decree in the nature of a definitive sentence; and (2) that Committee Room E of the House of Lords was exempt from ecclesiastical jurisdiction, being a Royal peculiar, and also being within the Royal Palace of Westminster:—*Held*, that the order of the 23rd of March was valid, that of the 9th of March not having been final; that the validity of the order of the 23rd of March was a question of the proper practice and procedure of the Ecclesiastical Court, and if there was any ground for impeaching it the remedy was not by way of prohibition but by appeal; and that, as the ground on which it was alleged that the order of the 23rd March was invalid did not appear on the face of the record in the second suit, prohibition could not be applied for after judgment. The principle of *O'Connell* v. *Reg.* (11 Cl. & F. 155) does not apply to an ecclesiastical offence so as to afford ground for prohibition:—*Held*, also, that, as the Palace of Westminster is not a royal residence, and has ceased to be a royal peculiar, Committee Room E of the House of Lords is not exempt from ecclesiastical jurisdiction. COMBE *v.* DE LA BERE **[47 L. T. 185**

2. —— *Public Worship Regulation Act—Monition—Contempt, Imprisonment for—Avoidance of Benefice—Satisfaction.*] G., a beneficed clerk, was admonished in a suit to discontinue certain illegal practices, and, on refusal, was inhibited from performing Divine Service within the diocese. For disobedience his contempt was signified, and he was imprisoned under warrant in pursuance of 53 Geo. 3, c. 127. G. remained in prison for three years, whereupon his benefice became void under sect. 13 of the Public Worship Regulation Act:—*Held*, that, as the services inhibited ceased to operate when the incumbency ceased, G. had substantially obeyed the order of the Court and satisfied the contempt, and was entitled to his discharge. DEAN *v.* GREEN **[46 J. P. 742**

—— Church rates.
See CHURCH RATES.

—— Proprietary chapel—Lease of—Covenant—"Regular clergyman."
See COVENANT. 1.

EDUCATION, ELEMENTARY.
See ELEMENTARY EDUCATION ACTS.

EJECTMENT—Demand of possession.
See LAND, ACTION FOR RECOVERY OF.

ELECTION—Corrupt practices—Prosecution for penalties—Delay.
See PARLIAMENT. 1.

—— Municipal—Corrupt practices—Petition—Special case.
See MUNICIPAL CORPORATION.

ELEGIT—Costs of sheriff.
See PRACTICE—COSTS. 5.

ELEMENTARY EDUCATION ACTS—*Attendance—Order on Father—Enforcement on Mother—*39 & 40 *Vict. c.* 79, *ss.* 11, 12.] Where an attendance order has been made, under sect. 11 of the above Act, on the father of a child, it cannot, under sect. 12, be enforced against the mother upon the death of the father. HANCE *v.* FAIRHURST - - - - **51 L. J. M. C. 139.**

2. —— *Contributory Districts—School-attendance Committee of a Union—Expenses of—Parish not under any other Local Authority*—33 & 34 *Vict. c.* 75, *ss.* 49, 50, 51, 74—39 & 40 *Vict. c.* 79, *ss.* 4, 21, 23, 28, 31, 32] The parish of S., in the P. Union, had no School Board of its own, but was made, by order of the Education Department, a contributory district of the adjoining parish of C., which had a School Board, and the children of S. attended the C. School Board habitually. In 1877 the P. Union appointed, under the 7th section of the Education Act of 1876, a school-attendance committee for certain parishes of the union, including that of S., and this committee appointed school-attendance officers for such parishes. In 1880 the committee incurred certain expenses in the enforcement of the attendance of children at school, and issued a precept to the overseers of S. requiring contribution of the share of the parish in such expenses. The overseers refused to pay such contribution on the ground that the parish of S. was under the jurisdiction and control of the parish of C., and not under that of the committee. The guardians thereupon summoned the overseers of S. before two justices of the county of C., who took the same view as the overseers, and dismissed the summons. On appeal from their decision:—*Held*, that notwithstanding S. was a contributory district to C., it was not a parish "under any other local authority" within the meaning of the Education Act of 1876, and was therefore under the jurisdiction of the school-attendance committee appointed by the guardians of the P. Union, whose precept requiring contribution from S. was right. REG. *v.* VANE (CUMBERLAND JJ.). *Re* PENRITH UNION GUARDIANS *v.* CASTLE SOWERBY OVERSEERS **51 L. J. M. C. 114; [47 L. T. 21**

3. —— *Penalty and Costs not to exceed 5s.—Costs of Distress Warrant not included*—33 & 34 *Vict. c.* 75, *s.* 74—*Summary Jurisdiction Act*, 1847 (11 & 12 *Vict. c.* 43), *s.* 19.] The provision of sect. 74 of the above Act of 1870 limiting the amount of penalty and costs for certain offences under the Act to 5*s.* does not apply to the costs of a distress warrant, under the above Act of 1847, to enforce payment. COOK *v.* PLASKETT **[46 L. T. 383**

EMBARRASSING PLEADING.
See PRACTICE—PLEADING. 6, 7.

EMPLOYER AND SERVANT.
See MASTER AND SERVANT.

ESTOPPEL—*Judgment—Action for Damages—Right to bring Fresh Action—Tort—Practice—Amendment of Pleadings.*] The Plaintiff having obtained damages in the County Court for a misrepresentation, under which he had been induced to enter into a contract, brought a fresh

ESTOPPEL—*continued.*

action in the Chancery Division for further damages accrued since the County Court judgment:—*Held*, that no further damages were obtainable, a tort not being a continuing cause of action.

Where there is a slip in the pleadings, leave to amend will be granted, unless a fresh cause of action is thereby raised. CLARKE *v.* YORKE [52 L. J. Ch. 32; 47 L. T. 381; 31 W. R. 62

—— Deed of inspectorship and composition—Release of debtor.
See DEED. 2.

—— Forged cheque—Payment by banker.
See BANKER. 1.

EVIDENCE—Account books—Original entries made on slate, and copied into—Books *held* competent evidence. REDLICH *v.* BAUERLEE [38 Amer. R. 87 (U.S.)

2. —— *Affidavits—Depositions—Removal from File.*] The Court can, in its discretion, take affidavits or depositions off the file in a proper case. FOX *v.* BEARBLOCK (No. 3) - 46 L. T. 145; [30 W. R. 342 (C.A.)

3. —— *Affirmation—Deposition under a Commission—Foreigner—Objection to Oath—Affirmation by Person not qualified to affirm—Time for taking Objection.*] In order to take the evidence of a foreign witness respecting certain matters connected with an action brought by the Plaintiffs against the Defendant, a commission was issued abroad. The witness having objected to be sworn was allowed by the commissioner to affirm. The deposition, which was regular on the face of it, was returned by the commissioner in the following terms: "Affirmed before me, the witness objecting to an oath."

The Plaintiffs were represented at the commission, but took no objection at the time to the evidence being given upon affirmation; subsequently, however, they applied in Chambers to have the deposition taken off the file on an affidavit shewing that the witness was a person not entitled to affirm:—*Held*, that the objection ought not now to be entertained, but should have been taken at the time, as there was not anything on the face of the deposition itself that shewed it had not been taken properly. RICHARDS (*or* RICKARDS) *v.* HOUGH - 51 L. J. Q. B. 361; [30 W. R. 676.

4. —— *Burden of Proof—Right dependent on a Negative.*] A statute enacted that a license to sell liquor might be granted, provided the applicant be a fit person, and not in the habit of becoming intoxicated, but not otherwise:—*Held*, that the burden of proof was on the applicant, to show that he was a fit person, &c. GOODWIN *v.* SMITH [37 Amer. R. 144 (U.S.)

5. —— *Collateral Facts.*] The Plaintiffs in an action respecting a nuisance alleged to have been caused by the construction and maintenance of a hospital for infectious diseases, proposed to give evidence of the effect of other similar hospitals on the neighbourhoods surrounding them.

Per Lord Selborne, L.C.: Evidence of facts by which the effect of such hospitals could be either positively or approximately ascertained, would be material and admissible.

Per Lord Watson: Evidence relating to collateral facts is inadmissible unless such facts will, if established, afford a reasonable presumption as to the matter in dispute, and unless such evidence is reasonably conclusive.—*Foulkes* v. *Chadd* (3 Doug. 157) discussed and distinguished. METROPOLITAN ASYLUM DISTRICT (MANAGERS OF) *v.* HILL. (Appeal No. 1.) - - - 47 L. T. 29 (H. L.)

EVIDENCE—*continued.*

6. —— Handwriting—Expert—Comparison of disputed signature with photograph of writing not in evidence not allowable—Opinion based on knowledge acquired *post litem motam.* HYNES *v.* MCDERMOTT - - 37 Amer. R. 538 (U.S.)

7. —— Negotiable instrument—Alteration in—Time of—A promissory note bearing on its face an apparent and material alteration, is admissible in evidence, and the question as to the time of alteration is for the jury. NEIL *v.* CASE [37 Amer. R. 259 (U.S.)

8. —— Privileged communication—Solicitor and client—Solicitor of parties adverse in interest—Action between one of them and third party. ROOT *v.* WRIGHT 38 Amer. R. 495 (U.S.)

9. —— Telegram—Delivered copy admissible when original and office from which it was sent are beyond the jurisdiction. WHILDEN *v.* MERCHANTS, &C. BANK - 38 Amer. R. 1 (U.S.)

10. —— Telegrams—Not privileged from production—*Subpœna duces tecum*—Accuracy of description of documents required to be produced. *Ex parte* BROWN - 37 Amer. R. 426 (U. S.)

11. —— *Will, Australian—Proof of—Letters testimonial—Partition Action.*] Letters testimonial, sealed by the Supreme Court of Victoria, signed by the Master in Equity and Chief Justice of that Court, and setting forth *verbatim* a will of realty made in that colony, and stating that it had been duly proved, were admitted as sufficient proof of the will for the purposes of the usual preliminary decree in an action for partition. WAITE *v.* BINGLEY 51 L. J. Ch. 651; 30 [W. R. 698

—— Affidavit—To supplement information.
See JUSTICE OF THE PEACE. 3.

—— Ambiguity, latent—Misdescription of legatee.
See WILL—CONSTRUCTION. 18, 20.

—— Bastardy—Resemblance of child to alleged father.
See BASTARDY. 2.

—— Bill of exchange—Ambiguity—Figures at bottom.
See BILL OF EXCHANGE. 5.

—— Burden of proof—Action to restrain removal of ward of Court.
See INFANT. 2.

—— Burden of proof—Gift from husband to wife.
See UNDUE INFLUENCE.

—— Burden of proof—Improper use of trustee's discretion.
See WILL—CONSTRUCTION. 1.

—— Criminal law.
See CRIMINAL LAW. 3—11.

—— Damages—Breach of agreement.
See CONTRACT. 2.

EVIDENCE—*continued.*

—— Deeds—Production of—Proof of contents.
See PRACTICE—MOTION FOR JUDGMENT. 1.

—— Performance of covenant to repair.
See VENDOR AND PURCHASER. 1.

—— Promissory note — Parol agreement — Indorsement "without recourse."
See BILL OF EXCHANGE. 11.

—— Secondary—Will—Handwriting of attesting witness.
See WILL—PROBATE. 3.

—— Seduction—Defendant's means.
See SEDUCTION.

—— Summons — Incompetence of party summoned.
See JUSTICE OF THE PEACE. 3.

EXECUTION CREDITOR—Costs—Elegit.
See PRACTICE—COSTS. 5.

EXECUTOR:—
I. ACTIONS (BY OR AGAINST).
II. ADMINISTRATION.
GENERAL.

I. EXECUTOR—ACTIONS (BY OR AGAINST)—*Administration Action by Trustee — Alleged Difficulties in Administration — Construction of Will—Doubts as to.*] An action for the administration of a small estate was brought by a trustee and executor of the testator, on the ground that it was in the interests of all parties, there being doubts as to the true construction of the will, and difficulties and disagreements regarding the interpretation of the trusts, and that he required the Court's protection. The Defendants, the beneficiaries (who, after the action was begun, had suggested that the quickest and least expensive way would be to state a special case for the opinion of the Court), denied that it was in the interest of all parties that the estate should be administered under the direction of the Court, and contended that there was no doubt whatever as to the true construction of the will. They submitted that the action should be dismissed, as being unnecessary, harassing, and destructive of the trust property:—*Held*, that the action must be dismissed, with costs to be paid by the trustee personally, as the Court will not permit itself to be made an instrument or mere agent of oppression, nor interfere where the result will be merely to take away the property of persons not able to protect themselves, and that, in this case, the question of construction, which was not doubtful, was the only ground upon which the interference of the Court could be asked for. *Re* CABBURN. GAGE *v.* RUTLAND — - - **46 L. T. 848**

2. —— *Class Descriptions — Inquiry as to Persons entitled in Administration Action—Form of Order.*] Where residuary estate is left by a testator to several persons by various class descriptions, the most convenient plan in an ordinary administration action is to insert in the judgment a general inquiry as to who are entitled to the estate, and in what shares and proportions, instead of inserting lengthy inquiries to ascertain the different classes. *Re* FOOKS. BROWN *v.* STONE **[30 W. R. 923**

I. EXECUTOR—ACTIONS (BY OR AGAINST—*continued.*

3. —— *Creditor's Administration Action — Form of Judgment—Bankruptcy Rules—Judicature Act*, 1875 (38 & 39 *Vict. c.* 77), *s.* 10.] In the judgment on a creditor's administration action the statutory direction that in case the estate shall prove insolvent, the rules respecting the estates of persons adjudged bankrupt shall prevail and be observed, need not be expressed.—*Re Hildick; Hipkins* v. *Hildick* (44 L. T. 547; 29 W. R. 733; 1881 Digest, col. 49) not followed. *Re* MURRAY; WOODS *v.* GREENWELL **[45 L. T. 707; 30 W. R. 283**

4. —— *Duty to sue—Wilful Neglect or Default—Conveyancing Act*, 1881 (44 & 45 *Vict. c.* 41), *s.* 37.] Executors, even before the above Act was passed, had a reasonable discretion whether they would or would not immediately sue a debtor of the testator for the amount due to his estate, and their delay in so doing, although loss was occasioned thereby, was not necessarily wilful neglect or default for which they could be made liable. But *semble*, that the effect of the above section is, that an executor is not liable for delay in suing for his testator's debt unless his conduct has not been *bonâ fide*.

A testator, to whom W. owed money on promissory notes, died in March, 1878, and the executors soon afterwards applied to W. for payment. W. said he could pay only by selling his real estate, which was, according to a valuation, sufficient to leave a surplus, after paying off mortgage debts, more than sufficient to pay the testator's debt. In March, 1879, W., after further pressure, offered his real estate for sale, but, as no adequate price was obtainable, withdrew it. W. afterwards obtained further advances from the mortgagees of the property, but no money was paid to the executors. On the 31st January, 1880, their solicitor again pressed for payment, and on the 10th February W. filed a petition for liquidation. He alleged that the only result of earlier pressure would have been the immediate filing of his liquidation petition:—*Held*, reversing the decision of Manisty, J., that the executors were not liable for the loss of W.'s debt to the estate.—*Caney* v. *Bond* (1 L. T. O. S. 409; 6 Beav. 486) questioned. *Re* OWENS. JONES *v.* OWENS - - - **47 L. T. 61 (C.A.)**

—— Order making executor party to testator's action.
See PRACTICE—PARTIES. 1.

II. EXECUTOR—ADMINISTRATION—*Mortgage—Exoneration of Realty—Adoption of Debt created by Predecessor in Title.*] B. by his will devised and bequeathed all his property to trustees upon trust, in the first instance to pay off a mortgage debt affecting certain lands which he had inherited from the mortgagor; and also all other his (B.'s) debts, funeral and testamentary expenses, and then to convey certain premises, including portion of the mortgaged lands, to M., in consideration of a specified sum of money and a perpetual rent-charge. He gave directions to his trustees as to the leasing of the remaining portions of the mortgaged lands. There was also in the will a residuary gift:—*Held*, that B. had adopted the mortgage debt as his own, and that

II. EXECUTOR—ADMINISTRATION—*continued.*
the will disclosed an intention that the debt should be satisfied out of his personalty, in exoneration of the lands subject to the mortgage. REYNOLDS *v.* M'GLOUGHLIN - **9 L. R. Ir. 405**

—— Jurisdiction of Probate Court—No assets within.
See WILL—PROBATE. 2.

—— Legacies—*Pari passu* ranking.
See WILL—CONSTRUCTION. 16.

EXECUTOR — Appointment of — Undisposed of residue.
See WILL—CONSTRUCTION. 2.

—— Mortgage by—Trade purposes.
See WILL—CONSTRUCTION. 10.

EXPERT—Evidence of—Comparison of handwriting.
See EVIDENCE. 6.

EXTORTION—Corrupt intent—Indictment.
See CRIMINAL LAW. 12.

EXTRAORDINARY TRAFFIC.
See HIGHWAY.

F.

FALSE IMPRISONMENT—*Lunatic, Arrest of—Public Duty*—Bonâ fide *Mistake of Law.*] An officer commanding military cantonments, and having, in the absence of the cantonment magistrate, general control over the police, believing that the appellant was, or was likely to become, a dangerous lunatic, directed two medical officers to examine him, and placed a guard over him, until they could decide on the case. The medical officers reported that the Appellant was perfectly sane:—*Held*, that as the conduct of the officer was illegal, his liability for damages at the suit of the Appellant was not removed by the fact that he acted in perfect good faith in the supposed discharge of a public duty, and on a *bonâ fide* belief that the Appellant was dangerous. SINCLAIR *v.* BROUGHTON AND THE GOVERNMENT OF INDIA
[47 L. T. 171 (P.C.)

—— Action against constable for—Notice of—Mistake in, as to date.
See NOTICE OF ACTION.

FALSE PRETENCES—Existing fact—Evidence.
See CRIMINAL LAW. 14.

FALSE REPRESENTATION.
See FRAUD; MISREPRESENTATION.

FEME COUVERTE.
See HUSBAND AND WIFE.

FIERI FACIAS—Sheriff's sale—Demand of possession.
See LAND, ACTION FOR RECOVERY OF.

FIRE—Accidental destruction of security by.
See CORPORATION. 2.

—— Destruction of hired railway carriages by.
See BAILMENT.

—— Destruction of premises by—Liability for rent.
See LANDLORD AND TENANT. 5.

FIRE INSURANCE.
See INSURANCE—FIRE.

FISHERY—*Freshwater Fisheries Act*, 1878 (41 & 42 *Vict. c.* 39), *s.* 11, *sub-s.* 3—"*Catching Fish*"—*Evidence of—Leave of Occupier.*] The Respondent was found in close time with a rod and line in a several fishery, and, on being challenged, denied that he had caught any fish, but, on being told that he must be searched, admitted that he had got four fish, which he then produced out of his pockets. It appeared that the Respondent had obtained leave to fish from the occupier of the land adjoining the river where he was fishing. An information under the above sub-section for unlawfully "catching fish" having been preferred against him, the justices dismissed the complaint, on the grounds (1) that there was insufficient evidence of "catching," and (2) that the Respondent was a person angling in a several fishery "with the leave of the owner" within clause (*b*) of sub-s. 3:—*Held* (by Grove and Bowen, JJ.), (1) that the above stated facts were good and sufficient evidence on which the justices ought to have convicted the Respondent of "catching" the fish; (2) that if, on hearing further evidence, the justices should find that the "occupier" who gave leave was not also the "owner," the respondent did not come within the exemption of sub-s. 3, clause (*b*). SWANWICK *v.* VARNEY
[46 L. T. 716; 30 W. R. 79; 46 J. P. 613

2. —— *Licence—Fishing without—Certificate of Secretary of State—Freshwater Fisheries Act*, 1878 (41 & 42 *Vict. c.* 39), *s.* 7—*Severn Fishery District—Tributary.*] The certificate of the Secretary of State defined the Severn Fishery district as "so much of the river Severn and of the rivers V. and T., and of all other tributaries of the said river Severn as is situate within the counties of Gloucester, &c." The rivers V. and T. flow directly into the Severn. Licences are necessary for fishing in the Severn Fishery District. An information was preferred against the respondents for fishing without licence in a brook which was a tributary of a tributary of the river T.:—*Held*, that the certificate included in the district only direct tributaries of the Severn, which this brook was not, and that the justices were therefore right in dismissing the information. MERRICKS *or* MERRICK *v.* CADWALLADER
[51 L. J. M. C. 20; 46 L. T. 29; 46 J. P. 216

3. —— *Salmon Fishery Acts—Using Net calculated to catch Salmon—Intention not to catch—Actual catching—Licence.*] The Appellant, a fisherman, without having a licence to catch salmon, made use of a small-meshed net, calculated to catch salmon, in fishing in a salmon fishery district. He shot the net several times in places where salmon are usually caught, and when he caught any salmon, he threw them back into the river, retaining only the sea fish, for which he was fishing:—*Held*, that, as the net used was calculated to catch salmon, and was used in a place where salmon are found, it was immaterial whether salmon were caught or were intended to be caught, and that the justices were right in convicting the appellant. SHORT *v.* BASTARD
[46 J. P. 580

FIXTURES—Gas-fittings—Mirrors.
See LANDLORD AND TENANT. 3.

FLOOD WATER—Passage of, through railway embankment.
See WATER AND WATERCOURSES. 6.

FOGHORN—Mechanical—Break down of.
See SHIP. 7.

FORCIBLE ENTRY—5 *Ric.* 2, *stat.* 1, *c.* 8—10 *Car.* 1, *sess.* 3, *c.* 13 (*Ir.*) (*corresponding with* 21 *Jac.* 1, *c.* 15).—*Right of Action.*]—An action is not maintainable by a person who has been in possession of lands, without title, against the true owner, for, with force and strong hand, entering the lands, expelling the Plaintiff from the possession, and taking goods the property of the Defendant then being on the lands.—*Newton* v. *Harland* (1 Sc. N.R. 474) observed upon. BEATTIE *v.* MAIR [10 L. R. Ir. 208

FORECLOSURE.
See MORTGAGE. 4—6.

FOREIGN JUDGMENT—Does not merge cause of action, but an action may be maintained on same cause in another State. EASTERN TOWNSHIPS BANK *v.* BEEBE - 38 Amer. R. 665 (U.S.)

—— Action on—Defence that judgment obtained by fraud.
See PRACTICE—PLEADING. 5.

FOREIGN LAW.
See CONFLICT OF LAWS.

FOREIGN WARRANT—Extradition.
See CRIMINAL LAW. 13.

FOREIGNER—Security for costs—Plaintiff resident abroad.
See PRACTICE—COSTS. 8.

FORESHORE AND SEAWEED—Patent from the Crown—Construction—Bill of peace—Exclusive user of foreshore by Plaintiff—Trespassers not alleging ownership—Establishment of Plaintiff's title by previous litigation. HAMILTON *v.* ATT.-GEN. - - - - 9 L. R. Ir. 271 (C.A.)

FORFEITURE—*Renewable Lease—Non-payment of Renewal Fines—Application to Court for Relief against Forfeiture—Conveyancing Act*, 1881 (44 & 45 *Vict. c.* 41), *s.* 14, *sub-ss.* 2, 3, 4.] Where the right of renewal of a lease for lives renewable for ever had been forfeited by non-payment of renewal fines within the time prescribed by the lease, though demanded in writing by the reversioners, the Court refused to grant relief against the forfeiture. RUTTLEDGE *v.* WHELAN 10 L. R. Ir. 263

—— Deposit in savings bank in fictitious name.
See SAVINGS BANK.

—— Insurance policy—Payment of premium.
See CONTRACT. 6.

—— Lease—Liquidation of under-tenant.
See LANDLORD AND TENANT. 1.

FORGERY—Evidence—Uttering forged instruments—Guilty knowledge.
See CRIMINAL LAW. 11.

—— Indorsement of bill of exchange—Promise to pay by person whose name is forged.
See BILL OF EXCHANGE. 9.

—— Joint note—Name of one maker forged.
See BILL OF EXCHANGE. 12.

FRANCHISE—County—Rent-charge.
See PARLIAMENT. 2.

FRAUD—Marriage—Promise of, by married man:—*Held*, actionable. POLLOCK *v.* SULLIVAN [38 Amer. R. 702 (U.S.)

2. —— Mercantile agency—False statements to, by members of firm, in order that such statements may be communicated to third parties, and so enable firm to procure credit—Action *held* to lie in favour of the party so deceived. EATON, &c., Co. *v.* AVERY - 38 Amer. R. 389 (U.S.)

—— *See* also MISREPRESENTATION.

—— Divorce petition—Agreement not to defend—Collusion.
See HUSBAND AND WIFE—DIVORCE. 1.

—— Guarantee for fidelity of employee—Pleading.
See GUARANTEE.

—— On power—Release—Benefit to appointor.
See POWER OF APPOINTMENT. 1.

—— Partner—Authority of solicitor to receive deposit.
See PARTNERSHIP. 3.

—— Signature to note obtained by.
See BILL OF EXCHANGE. 10.

—— Suspicion of—Act of bankruptcy.
See BANKRUPTCY—ACT OF BANKRUPTCY.

FRAUDS, STATUTE OF—*Auction—Written Memorandum—Receipt by Auctioneer's Clerk—Agreement annexed to Conditions of Sale—Name printed—Specific Performance—Mistake—Auctioneer—Costs.*] An agreement annexed to conditions of sale (at an auction) to which D, had put his mark, stating that D. had purchased from S., the vendor, for £250, the premises mentioned in the annexed particulars, subject to the conditions of sale, is a good memorandum in writing, within section 4 of the Statute of Frauds. A receipt given by the auctioneer's clerk to D., three days after the auction, and signed by the clerk, acknowledging payment of part of the purchase-money for "Lot 4, Mr. J. S.'s property," is not such a memorandum as would bind the vendor. *Semble*, that the name of the auctioneer, printed on the back of the particulars and conditions of sale, is sufficient to bind the vendor.

Where a vendor instructed an auctioneer to sell certain premises, and where, according to the evidence, by mistake on the vendor's part, such instructions were wide enough to take in certain premises to which the vendor had no title, and a person who heard the particulars read at the auction became the purchaser, in the belief that he would obtain all the premises, and brought an action for specific performance or damages:—*Held*, that mistake in such circumstances was no defence to the action. If the auctioneer is asked by the purchaser, before action brought, whether he had instructions from the vendor to sell the whole of premises sold by auction, or part only, and fails to answer, he must bear his own costs on being made a party to the action. DYAS *v.* STAFFORD - - - 7 L. R. Ir. 590

[NOTE.—The above decision has been reversed by the Court of Appeal.]

2. —— Delivery, symbolical—Sale of specific bulky articles—Order of vendor on his bailee for delivery, accepted by purchaser, and notified to bailee:—*Held*, a valid delivery. KING *v.* JARMAN [37 Amer. R. 11 (U.S.)

3. —— Oral promise to indemnify another for becoming bail for a third:—*Held*, not within the Statute of Frauds. ANDERSON *v.* SPENCE [37 Amer. R. 162 (U.S.)

FRAUDS, STATUTE OF—*continued.*

4. —— Oral promise to pay debt of another out of his property:—*Held*, not within the statute. MASON *v.* WILSON - **37 Amer. R. 612 (U.S.)**

5. —— Part performance — Parol agreement to take lease—Specific performance of, decreed. SEAMAN *v.* ASCHERMANN **37 Amer. R. 849 (U.S.)**

6. —— *Sale of Goods—Delivery to Carrier—Receipt—Acceptance—7 Wm. 3, c. 12, s. 13 (Ireland); corresponding with 29 Car. 2, c. 3, s. 17.*] The Plaintiff, having received a verbal order from the Defendant for certain goods, sent them by a route agreed upon between them. The invoice was forwarded at the same time, but was immediately returned by the Defendant with a letter stating that it did not correspond with the agreement, and notifying his refusal to take the goods:—*Held*, that there was no evidence of any receipt and acceptance of the goods by the Defendant, and that the Plaintiff could not maintain an action against him for the price.

Norman v. *Phillips* (14 M. & W. 277) followed. HOPTON *v* M'CARTHY - - **10 L. R. Ir. 266**

FRIENDLY SOCIETY—*Bankruptcy of Treasurer—Preferential Debt—Friendly Societies Act*, 1875 (38 & 39 *Vict. c.* 60), *s.* 15, *sub-s.* 7—*Bankruptcy Act*, 1869, *s.* 32.] A petition for liquidation having been filed by the treasurer of a friendly society, who had in his hands moneys belonging to the society amounting to £43. 4*s.* 10*d.*, received by him in the ordinary course of his office; the society's trustees claimed to have this amount paid in full in preference to the other creditors:—*Held*, that the trustees were so entitled, the amount owing being a preferential debt within the meaning of the Friendly Societies Act of 1875. *Ex parte* EDMONDS; *Re* ATKINS **51 L. J. Ch. 406; [46 L. T. 240; 30 W. R. 432**

2. —— *Default of Subscriber — Default of Society — Full period of Payment entitling to Benefit not complete — Forfeiture — Friendly Societies Act*, 1875 (38 & 39 *Vict. c.* 60), *s.* 30, *sub-s.* 2.] C., the Respondent's husband, was a subscriber in the appellant friendly society. By the society's rules a subscription for a period of 26 weeks entitled the subscriber to a "half benefit," and it was the duty of the society's collecting agent to collect the members' subscriptions. C. subscribed for 11 weeks from 17th Jan. 1881, and then changed his residence, and the collector no longer called for his weekly payments. No further sums were ever paid by C. down to his death, on 29th Sept. 1881. The Respondent, his widow, claimed, £11 5*s.* as "half benefit," and, on the society refusing to pay it, preferred a complaint to a police magistrate for the metropolitan district, who made an order upon the society to pay the amount claimed. The society appealed from the order:—*Held*, that the magistrate was wrong, and that the non-compliance with the rules of the society on the part of the person whom the Respondent represented was a bar to the recovery of the sum claimed, and that the alleged default on the part of the society did not cure the defect in the claimant's title. TAYLOR *v.* COLLINS - - - **46 L. T. 168**

—— Deposit in savings bank in fictitious name —*Mandamus.*
See SAVINGS BANK.

G.

GAMING—Winning at tossing with coins by fraud. &c.
See CRIMINAL LAW. 15.

GARNISHEE ORDER — Creditor of Plaintiff added as co-Plaintiff.
See PRACTICE—PARTIES. 4.

GENERAL AVERAGE — Practice of average adjusters—Custom of trade.
See INSURANCE—MARINE. 2.

GENERAL WORDS—Parcels—"Yards"—Plan.
See DEED. 1.

GIFT — Incomplete — Clause of revocation — Transfer of stock.
See VOLUNTARY CONVEYANCE. 2.

—— Promissory note not negotiable — Indorsement and delivery.
See ASSIGNMENT OF DEBT.

GOODWILL — *Assignment of, in Public-house—Right to Transfer of Licence.*] The mortgage of a public-house and business included an assignment of the goodwill of the house and business, and contained covenants for quiet enjoyment after default, and for further assurance of the premises:—*Held*, that the assignment of the goodwill included the right to a transfer of the existing licences held by the assignor in respect of the house, for the goodwill would be useless unless it were possible to supply the customers resorting to the house.—Decision of Fry, J. (46 L. T. 684; 30 W. R. 724) affirmed. RUTTER *v.* DANIEL **[30 W. R. 801 (C.A.)**

GRAVESTONE.
See TOMBSTONE.

GUARANTEE — *Pleading—Fraud — Fidelity of Person employed.*] In an action upon a guarantee for the fidelity of a rate-collector, the guarantors pleaded that the contract was entered into by them on the faith of a representation made by the Plaintiff and the person employed that there had been no balance outstanding from the latter, nor any irregularity in his accounts, and that such representation was untrue:—*Held*, bad, on demurrer, for not alleging either that the statement was fraudulent, or circumstances from which fraud could be inferred as a matter of law. In the absence of the word "fraudulently" there must be allegations of fact which *per se* amount to fraud.

Doyle v. *Hort* (4 L. R. Ir. 661) distinguished.

The guarantors, by their agreement, contracted to guarantee the Plaintiff against the fraud, &c., of the collector, "provided that [the Plaintiff] should, within ten days after the discovery by him of any fraud or dishonesty of the 'said person employed,' and of any matter in respect of which any claim may be intended to be made, give notice in writing, as far as the case will admit, of all the particulars thereof; and after any such discovery, the guarantee herein contained shall, as to loss by any act of fraud or dishonesty subsequent thereto, be at an end":—*Held*, that the proviso required notice to be given of such fraud or dishonesty only as would form the foundation of a claim under the guarantee, and did not impose upon the Plaintiff an obliga-

GUARANTEE—*continued.*

tion to give notice if he discovered that fraud or dishonesty had occurred on the part of the person employed, before the guarantee was entered into or the employment under himself commenced. BYRNE *v.* MUZIO - - - **8 L. R. Ir. 396**

—— *See* also PRINCIPAL AND SURETY.

GUARANTEE SOCIETY—Surety to administration bond.
See ADMINISTRATOR. 1.

GUARDIAN—Testamentary—Legacy Duty Act.
See PRACTICE—PAYMENT OUT OF COURT.

GUARDIANS OF POOR.
See POOR LAW; POOR-RATE.

H.

HANDWRITING—Comparison of—Expert.
See EVIDENCE. 6.

—— Of attesting witness—Proof of will by.
See WILL—PROBATE. 3.

HIGHWAY—*Extraordinary Expenses—Limitation of Summary Proceedings—Surveyor's Certificate—Highways and Locomotives Act*, 1878 (41 & 42 *Vict. c.* 77), *ss.* 23, 36—*Jervis's Act* (11 & 12 *Vict. c.* 43), *s.* 11.] The six months within which, by sect. 23 of the above Act of 1878, summary proceedings must be taken to recover expenses incurred by a highway authority, by reason of damage to the highway caused by excessive weight or extraordinary traffic thereon, are to be reckoned from the date of their surveyor's certificate. POOL AND FORDEN HIGHWAY BOARD *v.* GUNNING - **51 L. J. M. C. 49; 46 L. T. 163; [31 W. R. 30**

2. —— *Extraordinary Traffic—Limitation of Time—Certificate of Surveyor—Date of Repairs.*] In the year ending March, 1880, certain extraordinary traffic took place. The expense occasioned thereby was demanded from the respondent in November, 1880, and in March, 1881. The surveyor's certificate was signed in February, 1881, and the summons for non-payment was in April, 1881.—*Held*, that the proceedings against the respondent were in time, for the six months' limitation did not date from the time of making the repairs, but from the certificate and demand of payment. WHITE *v.* COLSON - **46 J. P. 565**

3. —— *Extraordinary Traffic—Timber, haulage of, in Timber District—Highway and Locomotives Act*, 1878 (41 & 42 *Vict. c.* 77).] In a group of parishes there were large woods which took ten to seventeen years to come to maturity. One or other of these woods was cut down every year, and the timber hauled over one or other highway each winter. Before such haulage the roads were in fair repair, the remaining traffic being mostly that of donkey carts and passengers. The haulage over 1½ miles caused an extra expenditure of £12 10*s.*, for which the respondents were summoned under the above Act.

The justices found that the weights were not excessive, and held that the traffic, being the usual trade of the district, was not extraordinary:—*Held*, that their decision was justified by the evidence. RAGLAN HIGHWAY BOARD *v.* MONMOUTH STEAM CO. - - - **46 J. P. 598**

HIGHWAY—*continued.*

4. —— *Extraordinary Traffic—Traction Engine for Manure—"Ordering" Traffic—Highways and Locomotives Act*, 1878 (41 & 42 *Vict. c.* 77), *s.* 23.] W., who occupied a farm near a country road two miles long, and used generally for ordinary farm traffic, having bought sixty tons of manure lying four miles off, went to the Appellant, who kept traction engines and waggons, and agreed to pay him a sum *per* ton to remove the manure to a spot pointed out on the above-mentioned road. No mode of conveyance was specified. E. conveyed the manure in two trucks drawn by a traction engine, and each weighing five tons. The road had not been made for traction engines, and none had been used there previously, although they were used on other roads near. The engine and trucks bulged the road into the ditch on either side, and caused extra expenditure for repairs:—*Held*, that this was "extraordinary traffic" within the above section, and that there was evidence that it was ordered by the Appellant. ELLIS *v.* MAIDSTONE SANITARY AUTHORITY **[46 J. P. 295**

—— Rate—Sewerage—Public works of.
See PUBLIC HEALTH ACT. 3.

—— Support of, by wall—Liability of owner to repair.
See EASEMENT. 2.

HIRING—Connecting railways—Carriages.
See BAILMENT.

—— Servant—Salary of certain sum per annum.
See MASTER AND SERVANT. 1.

HORSE—Carriage of—Injury caused by restiveness.
See CARRIER—GOODS. 3.

HOSPITAL—Small-pox—Nuisance—Effect of similar hospitals.
See EVIDENCE. 5.

HOTCHPOT CLAUSE—Absence of, from settlement—Appointment of part of fund as "full share" of appointee.
See POWER OF APPOINTMENT, 3.

—— Rectification of deed-poll by insertion of.
See POWER OF APPOINTMENT. 2.

HOTEL.
See INN; INNKEEPER.

HOUSE DUTY.
See REVENUE. 3—5.

HUSBAND AND WIFE:—
I. CONTRACTS BETWEEN.
II. DIVORCE.
III. MARRIAGE.
IV. WIFE'S PROPERTY.
GENERAL.

I. HUSBAND AND WIFE—CONTRACTS BETWEEN—*Judicial Separation—Separation Deed—Recohabitation, Effect of—Alimony—Wife's Debts.*] A husband and wife executed, in 1862, a deed of separation, which stipulated that the wife should not be compelled to cohabit with the husband, that she might dispose of her own property, that she might live where she pleased, and that the husband should allow her £100 per ann. so long as she should live chastely. The husband and wife lived apart till 1872, when they resumed cohabitation, but separated again in

I. HUSBAND AND WIFE—CONTRACTS BETWEEN—*continued.*

1879. In 1881 the wife obtained a decree for judicial separation, with alimony at the rate of £180 per ann. An action having been brought by a lodging-house keeper against the husband for food and lodging supplied to the wife in 1880, the husband pleaded the deed of 1862, and that he had paid the £100 per ann. as he had therein covenanted to do:—*Held*, that the resumption of cohabitation in 1872 did not rescind the deed, nor was it affected by the decree for alimony, and that the payment by the husband of the £100 per ann. was a good and sufficient answer to the Plaintiff's claim. NEGUS *v.* FORSTER - **46 L. T. 675; [30 W. R. 671 (C.A.)**

2. —— *Separation Deed—Agreement to compromise Divorce Petitions—Access to Children—Custody — Varying Award.*] A husband and wife having brought cross petitions for divorce, they were withdrawn at the hearing upon terms including the execution of a separation deed to be settled by a counsel agreed upon in case of difference and to contain "all usual terms as to access to children, &c." The parties being unable to agree, a deed was settled by counsel, providing that the wife should have the sole custody of the children, two boys 13 and 14 years of age, for half their vacations. An action having been brought by the wife for specific performance of the agreement:—*Held*, that these provisions related to custody and not to access, and that it was beyond the counsel's power to insert them:—*Held*, also, that the Court had power to settle the proper form of deed instead of sending it back. *Semble*, in an action for specific performance of agreements to execute separation deeds the Court will not go into evidence as to the benefit the children will derive from the provisions agreed upon. EVERSHED *v.* EVERSHED **46 L. T. 690; 30 W. R. 732**

—— Loan by wife to husband.

See HUSBAND AND WIFE—WIFE'S PROPERTY. 5.

—— Separation deed — Subsequent adultery—Order for maintenance.

See PRACTICE—DIVORCE. 2.

II. HUSBAND AND WIFE—DIVORCE—Adultery—Collusion—Fraud—Agreement not to defend action — Decree in absence — Position of person claiming to be reinstated against the results of his own fraud and collusion—Costs. GRAHAM *v.* GRAHAM - **9 C. of S. Cas. 327 (Sc.)**

2. —— *Domicil, Foreign—Jurisdiction.*] An Englishman, domiciled in England, deserted his wife in England, and went abroad with a paramour. Being anxious that his wife should obtain a divorce from him he was advised to make Scotland his home in order to facilitate her so doing; and, acting on this advice, went to Scotland and took a furnished house, where he lived with his paramour for 5 months. His wife having sued for a divorce in the Court of Session, he, notwithstanding his previous wish, defended the action, and pleaded "no jurisdiction." In evidence he said that he had never intended to remain in Scotland after a divorce had been obtained:—*Held*, that he had not acquired such a domicil in Scotland as to give the Scotch Courts jurisdiction. STAVERT *v.* STAVERT **9 C. of S. Cas. 519 (Sc.)**

II. HUSBAND AND WIFE—DIVORCE—*contd.*

—— Petition for—Agreement to compromise.

See HUSBAND AND WIFE—CONTRACTS BETWEEN. 2.

—— Practice.

See PRACTICE—DIVORCE.

III. HUSBAND AND WIFE—MARRIAGE—*Celebration of—British Territory—Roman Catholic Church.*] A marriage between British subjects, in accordance with the rites of the Roman Catholic Church, and in a country subject to British dominion, but with no Established Church, held to be valid. JAMES *v.* JAMES & SMYTH - **51 L. J. P. D. & A. 24; 30 W. R. 232**

2. —— *Validity of—Misdescription.*] Where a husband, married by licence, is incorrectly described in the licence as having two additional Christian names, the marriage is not thereby rendered invalid. HASWELL *v.* HASWELL & GILBERT **[51 L. J. P. D. & A 15; 30 W. R. 231**

IV. HUSBAND AND WIFE—WIFE'S PROPERTY—*Restraint on Anticipation—Arrears of Interest—Construction of Deed—Recitals—Debt contracted upon credit of Separate Estate—Evidence.*] A sum of £1000 settled in trust for S. for life, and after her decease in trust for her daughter F. (a married woman) for life, for her separate use, without power of anticipation, was invested on mortgage of lands the property of F.'s husband. Arrears of interest became due, and S. assigned the arrears at that time owing, and the future interest to become due in her own lifetime, to a trustee in trust for F. for life, for her separate use, to be paid to her on her own sole receipt, without power of anticipation; and as to so much of said moneys as should remain due, owing, or unpaid, at the time of her decease, upon trust for such persons as she should appoint. F.'s husband afterwards executed a mortgage of lands to the same trustee to secure the arrears, which in the mortgage deed were recited to have been paid to F., and re-lent by her to her husband. The trustee did not execute either deed, nor did he act in the trusts. The second deed contained no clause in restraint of anticipation:—*Held*, upon the construction of both deeds, that F. was not restrained from power of disposing of the amount secured by the second; and that the purpose of the restraining clause in the first was to prevent receipt by anticipation from the mortgagor of the interest payable on foot of the principal charge of £1000, secured upon his property, and did not extend to require the investment at interest of the arrears thereby assigned, or intercept the payment of such arrears by the trustee to F., or directly to herself, without the intervention of the trustee, in the event, which happened, of his not accepting the trusts. *Semble*, also, that the second deed, not being impeached as a colourable evasion of the restraint on anticipation in the first, and disclosing by its recitals actual payment of the arrears to F., and a re-lending thereof to her husband, constituted a new transaction, under which the amount of the arrears was invested by her upon a subsisting security, unfettered by any control on her power of alienation.

Some time after the execution of the deeds, F.'s husband conveyed his lands and other property in trust for his creditors, and one of the trustees

IV. HUSBAND AND WIFE—WIFE'S PROPERTY—*continued.*

joined with him in making a joint and several promissory note to secure an advance made to him. F. was subsequently appointed by the surviving trustee of the creditors' deed (who had joined in making the promissory note) manager of the trust property, and having entered into receipt of the rents and profits of the lands and property comprised in the trust deed, she joined with her husband in making and renewing from time to time joint and several renewals of the note. F.'s husband was adjudicated a bankrupt. The payees in the ultimate renewals deposed that she dealt with them on the credit of her separate estate; but this was disputed by her, and she alleged that she joined in renewing the notes with the intention that they should be paid out of the rents of the trust property, over which she was manager: *Held*, upon the evidence, that F.'s separate estate was chargeable with the amount of the notes. DEVITT *v.* FAUSSETT - - **7 L. R. Ir. 511**

(Affirmed, with a variation, on Appeal, **9 L. R. Ir. 84.**)

2. —— *Restraint on Anticipation—Power to bind Interest of Wife—Conveyancing Act*, 1881 (44 & 45 *Vict. c.* 41), *s.* 39.] Observations by Hall, V.C., on the effect of the above section. Applications where the removal of the restraint on anticipation is for the husband's benefit. TAMPLIN *v.* MILLER - - - **30 W. R. 422**

3. —— *Restraint on Anticipation—Practice—Form of Application for Leave to bind Interest of Married Woman—Conveyancing Act*, 1881 (44 & 45 *Vict. c.* 41), *ss.* 39, 69 *sub-s.* 3.] An application to the Court for leave to bind a married woman's interest in property, respecting which she is restrained from anticipation, must not be made by petition, but by summons in chambers. *Re* LILLWALL'S SETTLEMENT TRUSTS **[30 W. R. 243**

4. —— *Separate Estate—Jewellery—Judgment against Wife alone—Married Women's Property Act*, 1870 (33 & 34 *Vict. c.* 93), *s.* 10.] It was provided by a marriage settlement that all real and personal property to which the wife or her husband in her right at any time during the coverture should become entitled, except jewels, trinkets, and ornaments of the person, &c., which it was declared should belong to the wife for her separate use, and except legacies, &c., not exceeding at one time £300, should be transferred to the trustees upon the trusts of the settlement:—*Held*, that upon the marriage, *i.e.* "during the coverture," jewellery presented to the wife before marriage became the property of the husband in right of his wife, and was, therefore, made the property of the wife by the terms of the settlement. *Held*, therefore, reversing the decision of Mathew, J. (Cave, J. diss.), by which the ruling of Coleridge, C.J., had been affirmed, that such jewellery might be taken in execution upon a judgment recovered against the wife alone for a debt contracted before her marriage. MERCIER *v.* WILLIAMS - - - **30 W. R. 720 (C. A.)**

5. —— *Separate Estate—Loan to Husband out of—Action by Wife—O. XIV.*] A married woman can sue her husband in respect of money lent to him out of her separate estate. The

IV. HUSBAND AND WIFE—WIFE'S PROPERTY—*continued.*

Plaintiff having lent to the Defendant, her husband, on the security of his promissory note, £1,000 out of money bequeathed for her sole and separate use:—*Held*, that she was entitled to recover. HORRELL *v.* HORRELL - **46 J. P. 295**

6. —— *Separate Estate—Power.*] Where a married woman, the tenant for life, without power of anticipation, of certain house property, had power to direct the trustees to do repairs and charge the estate, and she employed a builder to do repairs:—*Held*, that the builder was entitled to be paid by having the amount raised by means of a charge on the estate. SKINNER *v.* TODD **[51 L. J. Ch. 198; 46 L. T. 131: 30 W. R. 267**

7. —— *Separate Estate—Practice—Claim for Inquiry — O. XXIX. r.* 10.] Form of order. MCQUEEN *v.* TURNER - - - **30 W. R. 80**

—— Legacy to married woman — Restraint on anticipation or alienation.
See WILL—CONSTRUCTION. 17.

—— Restraint on anticipation—Title of petition.
See SETTLED ESTATES ACT. 5.

—— Separate estate—Trustee—Appointment of husband as.
See TRUSTEE. 1.

HUSBAND AND WIFE—Action against married woman—Judgment by default.
See PRACTICE—MOTION TO SET ASIDE JUDGMENT.

—— Gift from husband to wife—*Onus probandi.*
See UNDUE INFLUENCE.

I.

ILLEGAL SOCIETY—Action by, to recover debt: *Held*, not maintainable. SCHUETZEN BUND *v.* AGITATIONS VEREIN - **38 Amer. R. 270 (U.S.)**

ILLEGALITY—Contract—Compromise of crime.
See CONTRACT. 7, 8.

—— Deposits in savings bank in fictitious name —*Mandamus.*
See SAVINGS BANK.

—— Lottery—Delivery of article won in.
See LOTTERY.

IMPLIED TRUST—To invest personalty in purchase of realty.
See WILL—CONSTRUCTION. 9.

INCOME TAX.
See REVENUE. 1—3.

INDEMNITY—Promise of, for becoming bail for third party.
See FRAUDS, STATUTE OF. 3.

INDICTMENT—Common law and statutory offences—*Autrefois acquit.*
See CRIMINAL LAW. 19.

—— Extortion—"Extorsively."
See CRIMINAL LAW. 12.

INDORSEMENT—Forgery of—Illegal contract.
See BILL OF EXCHANGE. 9.

—— In blank—Evidence—Parol agreement.
See BILL OF EXCHANGE. 11.

—— Joint note, payable to order of "myself."
See BILL OF EXCHANGE. 13.

INFANT—*Maintenance—Advance for, secured on contingent Interest of Infant.*] In the case of an infant who was entitled to property contingently upon attaining twenty-one years or marrying, the Court sanctioned a scheme for the payment of past and future premiums on a policy payable in case she died before twenty-one or marriage, and for the payment of past and future maintenance of the infant, such payments to be secured by a mortgage on the policy, and a charge on the infant's contingent interest, the charge not to affect the interest of any person other than the infant. The order should in such a case follow that made in *Re Arbuckle* (Seton, 4th ed. vol. 2, p. 726), as far as possible. *Re* BRUCE - **30 W. R. 922**

2. —— *Ward of Court—Parental Authority—Removal out of Jurisdiction—Action to prevent Removal—Onus of Proof.*] The Defendant, who was an undischarged bankrupt, purposed emigrating to Manitoba, where he would at once obtain a grant of 160 acres of prairie, and to take with him his six infant sons. The eldest, who was nearly eighteen, was apprenticed as an engineer in the Government Dockyard at Devonport, and had been there about two years. The infants having been made wards of Court, a motion was brought for an injunction to restrain the father from taking them out of the jurisdiction. An uncle had undertaken to provide for the maintenance of the eldest son so long as he remained in the Government employment and could not earn sufficient to maintain himself:—*Held* (affirming the decision of Bacon, V.C.), that it would not be for the benefit of the eldest son to accompany his father, and that therefore leave could not be given for his removal out of the jurisdiction, but that leave should be given to the father to take the other sons with him, and, if successful in Manitoba, to apply for leave to remove the eldest after the expiration of a year.

Per JESSEL, M.R.: The *onus* of satisfying the Court of the impropriety of removing the infants rested on the persons who sought to restrain such removal; as the action had been begun for the purpose of making the infants wards of Court in order to prevent their father removing them. *Re* PLOMLEY. VIDLER *v.* COLLYER
[47 L. T. 283 (C. A.)

—— Adoption of—Incomplete gift.
See VOLUNTARY CONVEYANCE. 2.

—— Conveyance by—Repudiation of.
See VOLUNTARY CONVEYANCE. 1.

—— Death of, caused by negligence—Action by father.
See NEGLIGENCE. 1.

—— Defendant in foreclosure action—Practice.
See MORTGAGE. 5.

—— Defendant—Notice of trial as against.
See PRACTICE—MOTION FOR JUDGMENT.

—— Injury to—Swing bridge.
See NEGLIGENCE. 4.

—— Negligence—Travelling in freight car without paying fare.
See MASTER AND SERVANT. 5.

—— Next friend—Death of.
See PRACTICE—PARTIES. 5.

—— Testamentary guardian—Legacy Duty Act.
See PRACTICE—PAYMENT OUT OF COURT.

INHABITED HOUSE DUTY.
See REVENUE. 3—5.

INJUNCTION—*Covenant not to use Building for certain Purposes—Threatened Breach.*] A person who has covenanted not to use a building for certain purposes (*e. g.*, as a circus) will not be restrained from erecting a building which can apparently only be used for such purposes. WORSLEY *v.* SWANN - - **51 L. J. Ch. 576**

—— Action against liquidator personally.
See COMPANY—WINDING-UP. 13.

—— Against trustees—Breach by new trustees.
See CONTEMPT OF COURT. 1.

—— Claim for, joined to claim for quiet possession.
See PRACTICE—JOINDER.

—— Interlocutory—Slander of title.
See TRADE-MARK. 3.

—— Notices of alleged infringement of patent.
See PATENT. 2.

—— Railway—Use of line—Rent in arrear.
See RAILWAY. 2.

—— Removal of coal supporting Plaintiffs' workings.
See MINES. 1.

—— Removal of pillars of coal—Mining lease.
See LEASE.

—— Removal of ward of Court out of jurisdiction.
See INFANT. 2.

—— Use of assumed name.
See TRADE NAME. 1.

INLAND REVENUE.
See REVENUE.

INN—*Brothel—Permitting Premises to be used as—Evidence of a Single Act—Absence of Personal Knowledge—Acts of Servant.*] P, a licensed innkeeper, and also a working artizan, being away from his inn at work, the police noticed, during his absence, two known prostitutes accompanied by two men enter the premises, where they proceeded a little later to occupy a double-bedded room, and, after three hours the police having knocked at the door and after some further delay gained admittance, found the two women in bed with P.'s wife, and the men in the double-bedded room by themselves.

No evidence of previous misconduct on the part of P. was given, and his wife and servants gave no rebutting evidence in his favour:—*Held*, that though P. was absent and no previous similar case had been proved, there was ample evidence that he permitted his premises to be used as a brothel; and that, there being no point of law raised before the justices, they were not bound to state a case. REG. *v.* HOLLAND, LINCOLNSHIRE (JUSTICES OF)
[46 J. P. 312

—— Licence—Transfer of, right to, on assignment of goodwill.
See GOODWILL.

INNKEEPER—*Negligence—Liability for Loss of Guests' Property—Contributory Negligence.*] This was an action brought to recover the value of jewellery which was stolen during the night from a table in the bedroom of the Plaintiff, whilst he and his wife were staying as guests at the Defen-

INNKEEPER—*continued.*

dants' hotel. There was a bolt inside, and a key outside, the bedroom, and a wardrobe with drawers in the room. The Plaintiff left the key outside the door, but he swore positively that, when he went to bed, he bolted the door on the inside, at the same time admitting that he had said, in reply to an observation that the door could not be unbolted from the outside, "If that is so, I must have made a mistake." The Plaintiff's wife had been wearing valuable jewellery in the hotel during the evening:—*Held*, that there was sufficient evidence of negligence on the part of the Plaintiff to be left to the jury; that, even if leaving the door unbolted was not in itself sufficient evidence, there were other circumstances which, coupled with it, would be sufficient; and, that it cannot be laid down as a proposition of law that leaving the door unbolted is not evidence of negligence, but that each case must depend upon its own circumstances. HERBERT *v.* MARKWELL - - **45 L. T. 649; 46 J. P. 358**

[Affirmed by the C.A., **W. N., 1882, 112**]

INSPECTION OF DOCUMENTS.

See PRACTICE—DISCOVERY—DOCUMENTS.

INSURANCE:—

I. FIRE.
II. LIFE.
III. MARINE.
GENERAL.

I. INSURANCE—FIRE.—House and personalty in one policy, voidable as to house by reason of misrepresentation:—*Held*, void as to personalty also, unless insurer would have taken both risks separately. ÆTNA INSURANCE CO. *v.* RUSH **[38 Amer. R. 228 (U.S.)**

—— By lessee, for lessor's benefit—Payment of rent.

See LANDLORD AND TENANT. 5.

II. INSURANCE—LIFE.—Insanity of insured *held* to be no excuse for failure to pay premiums. WHEELER *v.* CONNECTICUT, &C., INSURANCE CO. **[37 Amer. R. 594 (U.S.)**

2. —— Premium—Payment of, made a condition precedent—Payment by third party, without knowledge of insured, though with his money. WHITING *v.* MASSACHUSETTS INSURANCE CO. **[37 Amer. R. 317 (U.S.)**

3. —— Provision that paid-up policy would be issued upon default in payment of any premium, on condition of surrender of original policy, within sixty days of default.

Re Albert Life Assurance Co. (L. R. 9 Eq. 703) distinguished. UNIVERSAL LIFE INSURANCE CO. *v.* WHITEHEAD - - **38 Amer. R. 322 (U.S.)**

III. INSURANCE—MARINE—*Beginning of Adventure—From the Loading on Board—Loss of Lighters alongside.*] By an insurance policy underwritten by the Defendants, the Plaintiffs, who were shipowners, caused "themselves to be insured, lost or not lost, at and from L. to B., upon freight (valued at interest) of and in the vessel H., beginning the adventure upon the said goods or freight from the loading thereof on board the said ship at L., and to continue and endure during the said vessel's abode there, and until the said vessel shall have arrived at B., and the said

III. INSURANCE—MARINE—*continued.*

goods shall be safely delivered from the said ship." The Plaintiffs' vessel began to load at L. a cargo of oats for B., and a portion of the cargo was in lighters alongside, and was about to be transferred to the vessel when, by perils of the sea, the lighters and a portion of the cargo were wholly lost, and the Plaintiffs prevented from earning the freight insured:—*Held*, upon demurrer, that the Plaintiffs could not recover. HOPPER *v.* WEAR MARINE INSURANCE CO. - - **46 L. T. 107**

2. —— *General Average—Practice of Average Adjusters—Not Evidence of Custom of Trade.*] A uniform practice for sixty or seventy years on the part of average adjusters to prepare their statements according to the decisions of the Courts is no evidence of such a trade custom as can be impliedly incorporated in a contract between a shipowner and a cargo owner.

The Defendants, cargo owners, in an action by the shipowner to recover a general average contribution in respect of expenses caused by the ship putting into a port of refuge, landing, storing, and re-shipping the cargo, and leaving the port, alleged a trade custom that in such a case the expenses incurred in and about warehousing the cargo were apportioned amongst the cargo owners only, and the owners of the ship and freight bore the expenses of re-shipping the cargo, port dues, &c.

Evidence was adduced to the effect that for sixty or seventy years the practice of average adjusters had been as the Defendants had alleged, but that, in consequence of the decision in *Atwood v Sellar* (5 Q. B. D. 342) some average adjusters had in such a case altered their mode of adjustment:—*Held*, that this was not evidence of a trade custom which ought to be left to the jury. SVENDSON (*or* SVENDEN) *v.* WALLACE **[46 L. T. 742; 30 W. R. 841**

3. —— *Policy—Contract between Shipowner in Ireland and Underwriter in England—Custom of Lloyds' that Amount of Policy should be payable only in London—Writ—Service out of Jurisdiction.*] The Plaintiff, owner of a vessel belonging to the port of Belfast, instructed N., a Belfast insurance agent, to effect a policy of insurance on the vessel; the insurance agent, through his London agent R., effected the policy in London with the Defendants, and the owner paid N. the premium in Belfast, and there received the policy from him. The Defendants alleged that they carried on business at Lloyds', in the City of London, only; that they neither accepted risks, received premiums, paid losses, or had any agents out of London; that the policy was underwritten at Lloyds' in consequence of a proposal made by R at Lloyds'; that the premium was paid and the policy delivered by and to R. in London; that they did not, nor did N., or any other person on their behalf, receive the premium or deliver the policy at Belfast; and that, in accordance with a well-known custom of Lloyds', any money which might become due under the policy was payable at Lloyds', and not elsewhere. The Plaintiff alleged that he had no notice or knowledge of that custom before effecting the policy. The Defendants refused to pay the amount of the policy to the Plaintiff:—*Held* (reversing the order of the

III. INSURANCE—MARINE—*continued.*

Common Pleas Division), that the Plaintiff, who had no knowledge or notice of the alleged custom before effecting the policy, was not bound thereby; that the Defendants were bound to pay the amount (if any) due on the policy to the Plaintiff in Belfast; that the non-payment constituted a breach of their contract with the Plaintiff, within the jurisdiction; and that he was entitled to an order for leave to serve a writ to recover the amount of the policy on the Defendants out of the jurisdiction. WARD *v.* HARRIS - **8 L. R. Ir. 365 (C.A.)**

INSURANCE—Policy — Forfeiture—Payment of premium.
See CONTRACT. 6.

—— Policy—Gift of "residue" of—Bonus added after testator's death.
See WILL—CONSTRUCTION. 25.

INTENTION—Will—Conditional gift.
See WILL—CONSTRUCTION. 13.

INTEREST—*After Maturity.*] In an action upon a contract to pay a sum of money at a certain time with specified rate of interest, the creditor can recover interest at that rate, not merely until the agreed time for payment of the principal, but until it is actually paid or his claim for principal and interest judicially determined.—*Re Roberts* (14 Ch. D. 39) observed upon. UNION INSTITUTION *v.* CITY OF BOSTON **37 Amer. R. 305 (U.S.)**

—— Partnership premium—Return of, on dissolution—Chief Clerk's certificate.
See PARTNERSHIP. 2.

—— Payable by administrator on misapplied dividends.
See ADMINISTRATOR. 4.

INTERNATIONAL LAW—Extradition.
See CRIMINAL LAW. 13.

INTERPLEADER—*Claim arising after Issue settled—Joinder of Trustee in Bankruptcy.*] Where, after the settlement of an interpleader issue, the execution debtor files a liquidation petition, and the trustee under the liquidation claims the goods in respect of which the issue has been directed, the trustee will, upon his application, be added as a claimant in the trial of the issue. BIRD *v.* MATTHEWS - - - **46 L. T. 512 (C. A.)**

2. —— *New Trial of Interpleader Issue—Application for—O. I., r. 2—O. XL. r. 10.*] Although by O. I., r. 2, the old practice in interpleader is preserved, O. XL., r. 10 applies to every application for a new trial, including therefore interpleader as well as ordinary actions; and the Court, on an application for a new trial of an interpleader issue, may, if satisfied that it has all necessary materials before it, give judgment accordingly, instead of directing a new trial. MERCIER *v.* WILLIAMS **[30 W. R. 720 (C. A.)**

INTERROGATORIES—Action by administrator for recovery of land
See PRACTICE—DISCOVERY—INTERROGATORIES.

INTESTACY.
See ADMINISTRATOR.

INVESTMENT CLAUSE—Will—Guaranteed railway stock.
See WILL—INVESTMENT CLAUSE.

ISSUE—Substitutional gift to—Parent dead at date of will
See WILL—CONSTRUCTION. 27.

J

JOINDER OF CAUSES OF ACTION—Action for quiet possession and for injunction.
See PRACTICE—JOINDER.

JOINT TENANCY—Will—Survivorship.
See WILL—CONSTRUCTION. 12.

—— Wrongful possession — Extinguishment of right.
See LIMITATIONS, STATUTE OF.

JUDGMENT—Foreign—Action on—Defence that judgment obtained by fraud.
See PRACTICE—PLEADING. 5.

—— Foreign—Merger of cause of action.
See FOREIGN JUDGMENT.

—— Motion for.
See PRACTICE—MOTION FOR JUDGMENT.

—— Motion to set aside—Action against married woman.
See PRACTICE—MOTION TO SET ASIDE JUDGMENT.

JUDICIAL SEPARATION — Alimony — Wife's debts—Husband's liability.
See HUSBAND AND WIFE — CONTRACTS BETWEEN. 1.

JURISDICTION—*Admiralty—Claim for Damages for Collision in a Dock—Admiralty Court Act.* 1861 (24 *Vict. c.* 10), *s.* 7.] A collision having taken place between two ships in the basin of the Royal Albert Dock:—*Held*, that as the High Court of Admiralty had, under the above section, jurisdiction in an action for damages for such collision, the City of London Court had, under 31 & 32 Vict. c. 71, also jurisdiction. REG. *v.* KERR - - - - **30 W. R. 566**

—— Attesting witness resident out of—Proof of will.
See WILL—PROBATE. 3.

—— Calcutta High Court in Admiralty.
See PRACTICE—APPEAL. 4.

—— Conspiracy—Formed in one, carried out in another, State.
See CRIMINAL LAW. 16.

—— Costs—Probate and Chancery Divisions.
See ADMINISTRATOR. 2.

—— Court of Appeal—Action remitted to County Court for trial.
See PRACTICE—APPEAL. 1.

—— Divorce—Foreign domicil.
See HUSBAND AND WIFE—DIVORCE. 2.

—— Ecclesiastical Courts — Palace of Westminster.
See ECCLESIASTICAL LAW. 1.

—— Justices—Bastardy order.
See BASTARDY. 3.

—— Justices—Disqualification by interest.
See JUSTICE OF THE PEACE. 2.

JURISDICTION—*continued.*

—— Justices—Sureties to be of good behaviour.
See JUSTICE OF THE PEACE. 3, 4.

—— New party to action resident out of.
See PRACTICE—PARTIES. 1.

—— Petition—Appointment of new trustees—Vesting order.
See LUNATIC. 2.

—— Probate Court—Property in India.
See WILL—PROBATE. 2.

—— Service of order on lunatic out of.
See LUNATIC. 1.

—— Service of writ out of.
See INSURANCE—MARINE. 3.

—— Service out of—Partition action.
See PRACTICE—PARTITION.

—— Summons in winding-up.
See COMPANY—WINDING-UP. 10.

—— Trial without jury—Questions of fact—Acquiescence of Defendants.
See PRACTICE—TRIAL. 3.

JURY—Power of registrar to direct issue to be tried by
See BANKRUPTCY—REGISTRAR.

—— Questions to be left to—"Lodger."
See LANDLORD AND TENANT. 6.

—— Trial of issue without—Questions of fact—Jurisdiction.
See PRACTICE—TRIAL. 3.

JUSTICE OF THE PEACE—*Authority to disperse Unlawful Assembly.*] A justice of the peace is not justified in causing a meeting to be forcibly dispersed on the ground merely that he believes, and has reasonable and probable grounds for believing, that the meeting was held with an unlawful intent, unless the meeting be in itself unlawful; and a plea justifying an assault upon the ground that it was committed by a magistrate in dispersing a meeting, must either allege as a fact that the meeting was unlawful, or state facts from which its unlawfulness can be inferred. O'KELLY *v.* HARVEY - - **10 L. R. Ir. 285**

2. —— *Jurisdiction—Disqualification by Interest—Subscriber to Prosecuting Society—Cruelty to Animals Prevention Act*, 1849 (12 & 13 *Vict. c.* 92), *ss.* 2, 18, 21.] C., having been prosecuted by an officer of the Royal Society for the Prevention of Cruelty to Animals, for cruelty to a horse, was convicted and fined. Some of the justices who heard the summons and took part in the conviction were subscribers to a branch of the society, which received subscriptions and forwarded them to the society's London office. All the society's prosecutions were directed by the London secretary or committee, and no subscribers had any authority over or responsibility for such prosecutions, and the society never accepted any part of the penalties inflicted under the above sections: —*Held*, upon a rule for a *certiorari*, that there was nothing in the facts to create a real bias in the justices' minds sufficient to amount to a disqualifying interest. REG. *v.* DEAL (MAYOR AND JUSTICES OF). *Ex parte* CUBLING **45 L. T. 439; [30 W. R. 154; 46 J. P. 71**

3. —— *Sureties to be of Good Behaviour*—34 *Edw.* 3, *c.* 1—*Jurisdiction of Magistrates*—

JUSTICE OF THE PEACE—*continued.*

Evidence—Affidavit.] R., being present at the execution of an *habere* to enforce payment of rent, addressed a number of persons, including the tenant under eviction, as follows: "Pay no rent to the landlord. We will make you right about the land; we will build you a house at any expense and make you comfortable during the winter." A summons was issued against R., calling on her to shew cause why she should not be bound over to be of good behaviour. On the hearing, R. was ordered to find bail to be of good behaviour for six months, and in default to be imprisoned for one month; she refused to give bail, and was imprisoned for a month:—*Held*, on motion to shew cause against a conditional order for a writ of *certiorari*, that the justices had jurisdiction to make the order:—*Held*, further, that the evidence appearing in the informations might not be supplemented by affidavit of other facts occurring at the execution of the *habere*. REG. (REYNOLDS) *v.* JUSTICES OF CORK COUNTY **[10 L. R. Ir. 1; 15 Cox, C. C. 78**

4. —— *Sureties to be of Good Behaviour*—34 *Edw.* 3, *c.* 1—*Summons—Evidence—Incompetence of Party summoned to give*—Certiorari.] At a meeting of tenantry, F., their parish priest, addressed them, advising them that if any of them were evicted for non payment of rent, they should pay no rent till such evicted tenant should be restored to his holding. F. was summoned to appear at petty sessions, to shew cause why he should not give security for good behaviour, the summons reciting, and the depositions alleging, that F. had at the meeting endeavoured to excite discontent in the minds of Her Majesty's subjects, to incite them not to fulfil their lawful duties, and to combine to impoverish persons who would not obey an unlawful society known as the "Land League." At the hearing of the summons, portion of a newspaper report of F.'s speech at the meeting was read by his counsel, whereupon the prosecution tendered the whole report, which the justices admitted in evidence.

F. was tendered as a witness in his own behalf, but the justices refused to allow him to be examined.

An order having been made for F. to give sureties for good behaviour, he obtained a conditional order for a *certiorari*:—*Held*, (1) that the nature of F.'s speech afforded sufficient grounds for the order made by the justices.

Reg. (*Reynolds*) v. *Justices of Cork* (10 L. R. Ir. 1, *et supra*) adhered to.

(2.) That in an application under 34 Edw. 3, c. 1, several distinct instances of misconduct may be relied on.

(3.) That there was no improper admission of evidence.

(4.) That F. was not a competent witness.—REG. (FEEHAN) *v.* QUEEN'S COUNTY JJ. **[10 L. R. Ir. 294**

—— Jurisdiction—Bastardy order.
See BASTARDY. 3.

—— Jurisdiction—Exposing goods in front of shop.
See LOCAL GOVERNMENT.

L.

LAND—Forcible entry—Right of action
See FORCIBLE ENTRY.

LAND, ACTION FOR RECOVERY OF—*Chattel Interest—Purchaser at Sheriff's Sale—Demand of Possession—Sheriff—Execution*—Fieri facias.] A demand of possession is not necessary to enable a purchaser at a sheriff's sale to recover possession of land held for a chattel interest, duly seized by the sheriff, and assigned by him to such purchaser.—*Reidy* v. *Pierce* (11 Ir. C. L. R. 361) applied. Cases in which a demand of possession must be made before ejectment brought, considered and explained. CLONCURRY *v.* RYAN
[8 L. R. Ir. 392

—— Affidavit of documents.
See PRACTICE—DISCOVERY—DOCUMENTS. 1.

—— Discovery as to Defendant's title.
See PRACTICE—DISCOVERY—INTERROGATORIES.

—— Disputed title—Receiver.
See PRACTICE—RECEIVER. 1.

—— Embarrassing defence.
See PRACTICE—PLEADING. 6.

LAND SOCIETY—Association of more than twenty persons—Acquisition of gain.
See COMPANY—REGISTRATION.

LANDLORD AND TENANT—*Covenant in Lease against sub-letting—Forfeiture—Covenant to leave Hay and Straw on Premises—Claim by Trustee in Bankruptcy of Undertenant.*] The lease of a farm contained a covenant against sub-letting, and also a clause by which the landlord had a right of re-entry in case of breach of covenant, bankruptcy, or liquidation on the lessee's part. The lessee sub-let without having procured leave. The under-tenant afterwards filed a petition for liquidation, and then for the first time the landlord heard of the sub-letting. The landlord then agreed with two of the under-tenant's creditors to accept a new tenant on the old terms if one could be found in thirty-one days, and, if no tenant was found, to allow a reasonable time for removing the corn and other effects belonging to the under-tenant's estate. No new tenant having been found, the landlord took possession. The lease contained covenants by the tenant to do certain things during the last day of the term, and on delivering up the premises to leave the hay and straw grown thereon during the last year, on being paid for the same. The trustee in the bankruptcy of the under-tenant having sued the landlord for the value of the hay and straw:—*Held*, reversing the decision of Bramwell, L.J., that the Defendant was entitled to judgment; for the terms of the lease were binding on the under-tenant, and, as the lease was determined by forfeiture in consequence of the under-tenant filing a petition for liquidation, the clause giving a right to payment for hay and straw had no application, and the subsequent agreement did not affect the rights of the Defendant. SILCOCK *v.* FARMER - - - 46 L. T. 404 (C.A.)

2. —— *Duty of Landlord in respect to Common Stairway in Building including distinct Tenements.*] A landlord letting rooms in a building to

LANDLORD AND TENANT—*continued.*

different tenants is bound to keep a staircase common to the different tenements in reasonable repair, and the tenants are not to be conclusively deemed negligent in using it after learning that it has become dangerous. LOONEY *v.* MCLEAN
[37 Amer. R. 295 (U.S.)

3. —— Fixtures—Gas-fittings, screwed on gas-pipes; and mirrors, supported by hooks:—*Held*, not to be fixtures. MCKEAGE *v.* HANOVER FIRE INSURANCE CO. - - 37 Amer. R. 471 (U.S.)

4. —— *Furnished House—Agreement to deliver up House and Furniture and pay Sum for Damage and Breakage.*] Judgment of Field, J., and Huddleston, B, (9 Q. B. D. 235) affirmed; Cotton, L.J., dissenting. BABBAGE *v.* COULBURN (No. 2)
[46 L. T. 794 (C.A.)

5. —— Lease of realty and personalty—Insurance of personalty by lessee for lessor's benefit—Destruction by accidental fire—Lessee *held* relieved from subsequent payment of rent, notwithstanding covenant to keep premises in repair. WHITAKER *v.* HAWLEY 37 Amer. R. 277 (U.S.)

6. —— *Lodger—Lodgers' Goods Protection Act*, 1871 (34 & 35 *Vict. c.* 79), *ss.* 1, 2.] In order to constitute any one a "lodger" within the above Act, so as to entitle him to protection against a levy on his goods for rent due from his immediate landlord to the superior landlord, there must be evidence of the retention by the immediate landlord, or his servant, of some such dominion and power over the house he sub-lets, as the master of a house let in lodgings usually has.

In an action under the Act for wrongful seizure of furniture, the Judge should not leave the construction of the word "lodger" to the jury, but should tell them that if they take one view of the facts the plaintiff is a lodger, but if they take another view he is not one. MORTON *v.* PALMER - 51 L. J. Q. B. 7; 45 L. T. 427; [30 W. R. 115 (C. A.)

—— Distress after tenant bankrupt.
See BANKRUPTCY—DISCLAIMER.

—— Lease of minerals—Assignment to Co.—Liquidator's liability.
See COMPANY—WINDING-UP. 1, 2.

—— Lease of proprietary chapel—Covenant.
See COVENANT. 1.

—— Lease to Co.—Forfeiture of, on Co.'s being wound up.
See COMPANY—WINDING-UP. 10.

LANDS CLAUSES ACT—*Arbitration—Award—Umpire* (8 & 9 *Vict. c.* 18), *ss.* 23, 31.] The three months provided by *s.* 23 of the above Act, within which the umpire's award must be made, must be calculated from the date of his appointment as umpire, and not from the time when the arbitrators' awarding power ceases. *Re* PULLEN AND LIVERPOOL CORPORATION 51 L. J. Q. B. 285; [46 L. T. 391; 46 J. P. 468

2. —— *Compulsory Purchase by Railway Co.—Tithes—Compensation—Last Annual Assessment—"House"—Lands Clauses Act*, 1845 (8 & 9 *Vict. c.* 18)—37 *Hen.* 8, *c.* 12—42 & 43 *Vict. c. ccl., ss.* 30, 31] Where by a Railway Co.'s special Act power was granted to the Co. to take compulsorily property subject to tithes, on condition that the

LANDS CLAUSES ACTS—*continued.*

owner of the tithes was indemnified, by the Co. either continuing to pay them to him according to the last annual assessment, or purchasing them under the Lands Clauses Act of 1845, upon payment of compensation; and the Co. elected to purchase the tithes:—*Held*, that the last annual assessment was not the basis on which payment of the compensation was to be estimated.

Semble, that the only part of a railway station subject to tithes is that which is a "house."

Per Cave, J., "a house is an enclosed space, with walls, a roof, and an entrance capable of being closed." ESDAILE *v.* METROPOLITAN AND DISTRICT RAILWAY COS. - - - **46 J. P. 103**

3. —— *Practice — Charity Trustees — Land taken compulsorily—Consent of Charity Commissioners—Lands Clauses Act*, 1845 (8 & 9 *Vict. c.* 18, *s.* 70—*Charitable Trusts Amendment Act*, 1855 (18 & 19 *Vict. c.* 124), *s.* 35.] The Charitable Trusts Amendment Act, s. 35, provides that "any incorporated charity, or the trustees of any charity, whether incorporated or not, may, with the consent of the Board, invest money arising from any sale of land belonging to the charity . . . . in the purchase of land."

The consent of the Charity Commissioners is not necessary to a petition presented by charity trustees for the reinvestment in land of the purchase-money paid into Court in respect of land taken compulsorily under the Lands Clauses Act of 1845, and belonging to the charity. *Re* WILLIAM OF KYNGESTON'S CHARITY .. **30 W. R. 78**

4. —— *Practice—Costs — Abortive Inquiry—Inquisition set aside and Fresh Inquiry had—Lands Clauses Act*, 1845 (8 *Vict. c.* 18), *ss.* 34, 51, 52—*O. LV. r.* 1.] By s. 51 of the above Act, on every inquiry before a jury to ascertain the amount of compensation to be paid by the promoters, where the jury gives a verdict for a greater sum than that which the promoters offer, the promoters are to bear "all the costs of such inquiry." "Such inquiry" here means the whole inquiry which has resulted from the issuing of the promoters warrant to the sheriff. Where, therefore, the warrant having issued and an inquiry having been held, at which the jury, under the misdirection of the under-sheriff, found that the claimants had suffered no damage, and this inquisition to assess compensation under the above Act having been removed by *certiorari* to the Queen's Bench Division, was quashed there, on the ground that the under-sheriff had misdirected the jury; and the sheriff then held a further inquiry on the same warrant, and the jury duly awarded compensation to the amount of £525 to the claimants:—*Held*, that the claimants were entitled not only to the costs of and incidental to the inquisition which resulted in a good verdict, but also those of and incidental to the abortive inquiry. REG. *v.* MANLEY SMITH - - - - **30 W. R. 272**

REG *v.* NORTH LONDON RY. CO. **51 L. J. Q. B. 241**

5. —— *Practice—Payment out of Deposit—Petition—Parties—Consent in writing*—8 & 9 *Vict. c.* 18, *s.* 87.] Where, after payment of a deposit into Court and entry on to lands under the above Act, a corporation has afterwards concluded the purchase by contract, the deposit will be returned upon petition by the corporation, without service on the vendor, provided his written consent has been obtained to the petition. *Ex parte* HUDDERSFIELD (MAYOR OF). *Re* DYSON **46 L. T. 730**

LANDS CLAUSES ACT—*continued.*

6. —— *Practice — "Persons absolutely entitled"—Trustees—Service on* cestuis que trustent *—Lands Clauses Act*, 1845, *s.* 69.] The term "persons absolutely entitled," in s. 69 of the above Act, includes trustees with a power of sale, and the purchase-money of lands vested in such trustees paid into Court under that Act may be paid out to them on petition without service of the petition on the *cestuis que trustent*. *Re* THOMAS'S SETTLEMENT - **45 L. T. 746**; **[30 W. R. 244**

LATENT AMBIGUITY—Will—Misdescription of legatee—Parol evidence.

See WILL—CONSTRUCTION. 18, 20.

LEASE — *Power to grant — "Reasonable and proper" Exercise of Power—Mining Lease—Removal of Pillars of Coal—Consent to Removal to be given by Mortgagor — Injunction — Costs of Shorthand Notes of Evidence.*] Certain real estates were by will devised in strict settlement, power being given to the tenants for life (who were unimpeachable for waste) to grant mining leases for such terms and under and subject to such rents or reservations or agreements as to them should "seem reasonable and proper." A tenant for life having in 1843 demised mines for a term of ninety-nine years at a peppercorn rent, by way of mortgage, to secure £6000 and interest:—*Held*, that this was a valid lease under the power. The lease of 1843 referred to a prior lease of the same mines granted by the testator in 1829, and purported to grant all such and the like liberties, powers, authorities, and privileges as were granted by such prior lease, and all other liberties, &c., necessary for working the mines, except as in the prior lease was excepted. The lease of 1829 excepted certain minerals from the demise, and contained covenants by the lessees not to remove the pillars of the mines without the consent of the testator, his heirs and assigns.—*Held*, that the provisions in the lease of 1829 as to removal of pillars were incorporated into the lease of 1843.

On the 26th of April, 1850, the term of ninety-nine years and mortgage debt thereby secured were transferred to S., and by the same deed the tenant for life mortgaged his life estate to S. to secure further sums, and thereby made the term of ninety-nine years redeemable only on payment of the further sums as well of the original mortgage debt.—*Held*, that the term of ninety-nine years was validly charged with the further sums.

On the 10th of May, 1850, the mines were, by an arrangement with the mortgagees, demised by the tenant for life to a trustee for the mortgagees for forty years, and the lessee covenanted not to remove the pillars without the consent of the tenant for life, his heirs or assigns, or the person or persons for the time being entitled to the premises:—*Held*, that the mortgagees had not power to consent to the removal of the pillars by the lessee, the covenant being for the protection of the equity of redemption.

LEASE—*continued.*

Injunction granted with costs. Costs of the shorthand notes of the Plaintiff's evidence not allowed. MOSTYN *v.* LANCASTER. TAYLOR *v.* MOSTYN - **51 L. J. Ch. 696; 46 L. T. 648; [31 W. R 3**

—— Assignment of, to company — Liquidator's liability.
See COMPANY—WINDING-UP. 12.

—— Covenant against subletting—Covenant to leave hay, &c., on premises.
See LANDLORD AND TENANT. 1.

—— Covenant in—Proprietary chapel.
See COVENANT. 1.

—— Disclaimer of — Claim for unliquidated damages.
See BANKRUPTCY—PROOF. 2.

—— Disclaimer of—Distress—Covenants.
See BANKRUPTCY—DISCLAIMER.

—— Parol agreement to take—Specific performance.
See FRAUDS, STATUTE OF. 5.

—— Power of leasing to "person or persons"—Company.
See WILL—CONSTRUCTION. 24.

—— Renewable—Forfeiture—Relief against.
See FORFEITURE.

LEASEHOLDS—Bequest of, "free from all outgoings and payments."
See WILL—CONSTRUCTION. 17.

LEGACY.
See WILL.

LEGACY DUTY—Bequest of leaseholds free from.
See WILL—CONSTRUCTION. 17.

LIBEL—Innuendo—Relevancy.
See DEFAMATION. 1.

LICENCE — Marriage — Misdescription of husband in.
See HUSBAND AND WIFE—MARRIAGE. 2.

—— Public-house—Transfer on assignment of goodwill.
See GOODWILL.

LICENSING ACTS—Brothel—Permitting premises to be used as.
See INN.

LIEN—Banker's.
See BANKER. 3; BILL OF EXCHANGE. 6.

—— Seamen's, for wages—Priority.
See SHIP. 14.

—— Shipowner's, for freight.
See SHIP. 1, 2.

—— Solicitor's.
See SOLICITOR. 7—10.

LIFE INSURANCE.
See INSURANCE—LIFE.

LIGHT AND AIR — *Ancient Lights — Artisans' Dwellings Act*, 1875 (38 & 39 *Vict. c.* 36), *s.* 20—*Improvement Scheme—Compensation - Extinction of Rights.*] The 20th section of the above Act, dealing with the extinction of rights and easements in or relating to lands purchased by the local authority, applies to ancient lights respecting premises adjoining the purchased lands, and the loss of such ancient lights is matter for compensation by the local authority under the same Act. BADHAM *v.* MARRIS - - **45 L. T. 579**

LIGHT AND AIR—*continued.*

2. —— *Ancient Lights — New Buildings — Evidence of Position of Old Windows — Total Alteration of Structure—Loss of Easement.*] In 1868 a large warehouse, lighted by three large windows, was erected by the Plaintiffs on the site of three cottages, three stories high, and containing admittedly ancient lights. There was no reliable evidence as to the position of the cottage windows, though it was admitted that small parts of the new windows might occupy portions of space through which light was admitted to the cottages:—*Held*, affirming the decision of Bacon, V.C. (49 L. J. Ch. 598), that the easement could not be maintained in respect of the new building, there being no evidence as to the position of the ancient lights. FOWLERS *v.* WALKER **[51 L. J. Ch. 443 (C.A.)**

3. —— *Derogation from Grant—Mortgage of One of Seven Blocks forming part of the same Series — Easements necessary to Completion of Building Scheme.*] J., who was a draper at Liverpool, held a large piece of land as lessee under renewable leases from the corporation of Liverpool. The buildings standing on the land having been destroyed by fire, J. obtained fresh leases from the corporation, containing stipulations for the erection on the land of buildings the plans of which were to be approved by the corporation. These buildings consisted of seven blocks, separated by fireproof walls, but communicating with each other. Before the building had proceeded far, two of the blocks were mortgaged to secure £35,000. J. going into liquidation, the mortgagee foreclosed, and let the blocks to the Plaintiff, who occupied them as an hotel. Several rooms in these two blocks derived their light entirely from an adjoining block (which had become vested in the Defendant by another mortgage from J. prior to that under which the Plaintiff derived title, and which the Defendant occupied as business premises) by means of windows in the separating wall. The Defendant having blocked up these windows, the Plaintiff brought an action for an injunction to restrain him from so doing:—*Held*, that the injunction must be granted, as the different buildings formed part of one common scheme, and the mortgagee under whom the Defendant derived title must be held to have had notice of the plans, as they had been approved by the corporation and his own surveyor previously to his mortgage, and the mortgage contained a recital to that effect; also because the Defendant's predecessor, having stood by whilst the Plaintiff's building was being erected, could not block up his lights, so as to oblige him to make structural alterations in order to obtain light from other sources.—*Wheeldon* v. *Burrows* (12 Ch. D. 31) distinguished. RUSSELL *v.* WATTS **47 L. T. 245**

LIMITATION—Summary proceedings under Highways, &c., Act, 1878.
See HIGHWAY. 1, 2.

—— Tithes—Time for recovering.
See TITHE RENT-CHARGE.

LIMITATIONS, STATUTE OF — Cheque — No funds to meet—Statute runs from date of cheque. BRUSH *v.* BARRETT - **37 Amer. R. 569 (U.S.)**

2. —— *Wrongful Possession—Tenancy in Common—Joint Tenancy—Extinguishment of Right.*] C. by her will, devised realty to trustees, their heirs and assigns, in trust for her daughter for life, and after her death to sell and divide the proceeds between M., S., T., and J., share and share alike. On C.'s death her daughter, the tenant for life, entered and occupied till she died, in 1857. On her death T. and J. entered and remained in possession until 1874, when J. died. T. remained in possession until his death, in 1880. The trustees never acted in any way, so far as the realty was concerned, and the property was enjoyed by T. and J., and after J.'s death by T., without interruption or acknowledgment :—*Held*, that the expiration of twenty years from the death of the tenant for life extinguished the trustees' legal estate in fee, and with it the trusts affecting it; and that to ascribe the possession of T. and J., which for all the purposes of the will was unlawful, to the supposed lawful title which each of them had in respect of a quarter of the proceeds of sale, would be wrong. BOLLING *v.* HOBDAY **[31 W. R. 9**

LIQUIDATED DAMAGES—Contract not to carry on trade.
See CONTRACT. 4.

LIQUIDATION.
See BANKRUPTCY—LIQUIDATION; COMPANY—WINDING-UP.

LIQUIDATOR.
See COMPANY—WINDING-UP.

—— Official—Liability for Co.'s rates.
See POOR-RATE. 1.

LOAN—By wife to husband, out of separate estate.
See HUSBAND AND WIFE—WIFE'S PROPERTY. 5.

LOAN SOCIETY.
See FRIENDLY SOCIETY.

LOCAL ACT—*Promotion of Bill—Consent of Owners and Ratepayers to—Alteration in Commencement of Act, procured without such Consent—Borough Funds Act*, 1875 (35 & 36 *Vict. c.* 91), *s.* 4.] Where consent had been obtained, in accordance with the above section, to the promotion of a bill in Parliament, in consideration of certain benefits being conferred upon the owners of property in a borough by such bill upon its passing; and the promoters of the bill caused the coming into operation of the Act to take place at a later date than that specified in the bill, as drawn when such consent thereto was given:—*Held*, that the Court could not allow advantage to be taken by the owners of the benefits conferred by the Act previous to its coming into operation upon equitable grounds, and that the promoters of the bill had not been guilty of any breach of good faith. BIRKENHEAD (CORPORATION OF) *v.* CROWE - - - - - **46 J. P. 551**

—— Church rates—Levying of.
See CHURCH RATES.

LOCAL GOVERNMENT—*Exposing Goods in front of Shop—Claim of Right—Penalty—Jurisdiction.*]

LOCAL GOVERNMENT—*continued.*
The Appellant kept a draper's shop in front of which was a grid and cellar flap on which goods were exposed for sale covering a space more than a foot in width from the outer wall of the shop. The Appellant and his predecessor had done the same for thirty years. Being summoned for exposing goods which projected over the footway, he set up a claim of right as owner of the street or soil, and also on the ground that the original owner used always to do the same:—*Held*, that the Appellant was rightly convicted, there being no proof of the dedication by the original owner subject to such right, and no proof of ownership of the soil. WHITTAKER *v.* RHODES **46 J. P. 182**

—— *See* PUBLIC HEALTH ACTS; TOWNS IMPROVEMENT CLAUSES ACT.

LOCOMOTIVE—Sparks from—Damage.
See NEGLIGENCE. 3.

LODGER—Protection against levy on goods of.
See LANDLORD AND TENANT. 6.

LOTTERY—*Illegal Agreement—42 Geo.* 3, *c.* 119, *s.* 2.] The Court will not entertain an action to enforce delivery of a subject won in a lottery. CHRISTISON *v.* M'BRIDE - **9 C. of S. Cas. 34 (Sc.)**

LUGGAGE—Passengers'—Liability for safety of.
See CARRIER—PASSENGERS. 1.

LUNATIC—*Residing Abroad—Inquiry—Dispensing with Presence of Lunatic—Service of Order out of Jurisdiction—Next of Kin—Liberty to attend Proceedings.*] An inquiry concerning the alleged lunacy of a person resident abroad, and whose presence was dispensed with, having been directed, the order to that effect was directed to be served upon her and her stepfather, with whom she resided, by a registered letter.

The question as to whether the next of kin shall have liberty to attend the proceedings upon such an inquiry is left to the discretion of the Master, it being a matter of general practice. *Re* LANWARNE **46 L. T. 668; 30 W. R. 759 (C.A.)**

2. —— *Trustees, Appointment of New—Vesting Order—Jurisdiction—Lunatic Trustee—Co-Trustee sane but unfit to act—Trustee Act*, 1850 (13 & 14 *Vict. c* 60, *ss.* 5, 32, 35.] Where of three trustees one was dead, one an absconding bankrupt, and the third a lunatic, the Court on a petition being presented intituled both in Lunacy and in the Chancery Division, appointed three new trustees, and vested in them the right to transfer stock. *Re* DRUCE'S (*or* DUCE'S) TRUSTS **[46 L. T. 669; 30 W. R. 759 (C.A.)**

—— Fund in Court to credit of Lunacy matter—Mortgage debt.
See CONVERSION.

—— Insurance—Insanity of insured—Premiums.
See INSURANCE—LIFE. 1.

—— Intestate's widow a—Administration granted to daughter.
See ADMINISTRATOR. 5.

—— Sale of realty devised to—Administration action.
See VENDOR AND PURCHASER. 3.

—— Supposed—Arrest of—Mistake of law.
See FALSE IMPRISONMENT.

M.

MAINTENANCE — Advance for, secured on infant's contingent interest.
See INFANT. 1.

—— Discretionary power of—Gift to "vest" at specified age.
See WILL—CONSTRUCTION. 30.

MALICIOUS PROSECUTION — *Reasonable and Probable Cause.*] The Plaintiff having been prosecuted by the Defendant for perjury alleged to have been committed in an action for rent brought by the Defendant against the Plaintiff's father, was acquitted, and thereupon began this action against the Defendant for damages for malicious prosecution. The Judge at the trial directed the jury that in such an action the Plaintiff must prove affirmatively the absence of reasonable and probable cause and the existence of malice. The Judge also told the jury that, if they came to the conclusion that the Plaintiff had spoken the truth, but that the Defendant had a very treacherous memory, and went on with the prosecution under the impression that the Plaintiff had committed perjury, yet, if that was an honest impression, the result of a fallacious memory, and if acting thereupon he honestly believed that the Plaintiff had sworn falsely, they would not be justified in finding that the Defendant had prosecuted the Plaintiff maliciously and without reasonable and probable cause:—*Held*, affirming the decision of Huddleston, B., and Hawkins, J. (8 Q. B. D. 167), that this was a proper direction. HICKS *v.* FAULKNER - **46 L. T. 127; 46 J. P. 420 (C.A.)**

MANDAMUS—Savings bank—Deposits in fictitious names—Forfeiture.
See SAVINGS BANK.

MANSLAUGHTER — Unlawful arrest — Police officer.
See CRIMINAL LAW. 17.

MARINE INSURANCE.
See INSURANCE—MARINE.

MARKET—*Tolls—Rateability of—Stallage.*] By a local Act (9 Geo. 4, c. cxiii.) portions of a market which were granted to the Appellant's ancestors by a charter of Car. 2, were divided into stands, which were exclusively appropriated for certain defined purposes, and the tolls specified in a schedule to the Act were authorised to be taken from the persons using the stands.

The building of shops and warehouses was also authorised by the Act, prior to which the market had been open and without division, and tolls were taken on goods exposed for sale anywhere in the market. The Appellant having been rated in respect of the tolls derived from the user of these stands, as well as in respect of the rents he received from the shops and certain stands which he let by the year, admitted his liability in respect of these rents, but denied it as regarded the tolls:—*Held*, that the tolls were liable to be rated, for since the Act they were payable in respect of the right of sale within certain defined portions of the market, and therefore in the nature of stallage tolls. REG. *v.* BEDFORD. BEDFORD (DUKE OF) *v.* OVERSEERS OF ST. PAUL'S, COVENT GARDEN **51 L. J. (M. C.) 41; [45 L. T. 616; 30 W. R. 411; 46 J. P. 581**

MARRIAGE.
See HUSBAND AND WIFE—MARRIAGE.

—— Promise of, by married man.
See FRAUD. 1.

MARRIAGE SETTLEMENT—*Resulting Trust—Marriage Portion—Failure of Trusts of Corpus.*] By a marriage settlement, to which the wife's father was a party, after reciting that he had agreed to give £3000 as a marriage portion with his daughter, and that it had been agreed that £500 should forthwith be paid to the husband for his own use, and that the residue should be invested on trusts therein mentioned, and that the wife's father had accordingly paid £500 to the husband and had invested the remainder in the trustees' names, it was declared that the £2500 should be held in trust for the father until the marriage, and then (after giving to the husband and wife life interests and a power of appointment among the children, which was not exercised) for the children attaining twenty-five, and in default of such children for the wife's representatives or next-of-kin.

The trusts for the children and those subsequent thereto being considered bad for remoteness, and the husband's executors claiming the £2500 on the ground that the settlement shewed an absolute gift to the wife:—*Held*, that the trusts resulted to the settlor, the gift being merely for the purposes of the settlement. *Re* NASH'S SETTLEMENT - **51 L. J. Ch. 511; 46 L. T. 97; [30 W. R. 406**

—— Separate estate — Jewellery — Judgment against wife alone.
See HUSBAND AND WIFE—WIFE'S PROPERTY. 4.

—— Trustee of—Grant of administration to.
See ADMINISTRATOR. 3.

MARRIED WOMAN.
See HUSBAND AND WIFE.

MASTER AND SERVANT — *Hiring—Salary of £500 a-year—Notice.*] In the absence of any custom to the contrary, a hiring at a salary of £500 a-year is *primâ facie* a hiring for a year certain. The Defendants employed the Plaintiff as their engineer at a salary of £500 a-year, and dismissed him at a three months' notice:—*Held*, that he could recover his salary for the portion of the year remaining unexpired. BUCKINGHAM *v.* SURREY AND HANTS CANAL CO. - **46 L. T. 885**

2. —— *Master's Liability—Common Employment—Person "entrusted with superintendence"—Employers' Liability Act*, 1880 (43 & 44 *Vict.* c. 42), *s.* 1, *sub-ss.* 1, 2.] The Plaintiff was employed as a bricklayer's labourer by the Defendants, a firm of builders. His duty was to carry mortar to and fro along the basement of a building in course of erection by the Defendants. A part of the plant used in the building work for raising and lowering a pail with materials from the ground to the upper floor, where the bricklayers were at work, was a "gin wheel and fall," consisting of a pulley, over or through which ran a rope, to the end of which were attached two short pieces of rope of equal length, with a hook at the end of each, which hooks clipped the pail handle, "one in and one out," on opposite sides. Two men were employed to work this machinery, one at the

MASTER AND SERVANT—*continued.*

top of the building, the other at the bottom, some fifty feet below, it being the duty of the man at the bottom to hold the rope so as to steady the pail in its passage up or down.

The bottom man being temporarily absent, without leave and unknown to the foreman, a pail of cement, which was being lowered, swayed from side to side in its descent through its not being steadied by the guiding rope, and, striking against a cross timber of the scaffolding, became unhooked and fell to the ground, knocking down and injuring the Plaintiff, who, in the usual course of his employment, was passing underneath carrying mortar.

The Plaintiff having brought an action under the above Act, in the County Court, to recover damages for his injuries, the jury found (1) that the injury was caused by the pail becoming unhooked, (2) that there was no defect in the machinery used, (3) that the accident was caused by the act or omission of the two men employed to lower the pail; and they found a verdict for the Plaintiff for £50, for which sum the Judge directed judgment to be entered for the Plaintiff:—*Held*, that, the jury having found that there was no defect in the Defendants' machinery, and that the accident was caused by the negligence or default of the men employed to lower the pail, who were not persons "entrusted with any superintendence," but ordinary workmen like the Plaintiff, the case did not fall within either of the above sub-sections, and that therefore the Defendants were not liable to the Plaintiff for the injuries resulting from the accident. ROBINS *v.* CUBITT - **46 L. T. 535**

3. —— *Master's Liability—Negligence—Coal Mines Regulation Act*, 1872 (35 & 36 *Vict. c.* 76), *s.* 52—*Employers' Liability Act*, 1880 (43 & 44 *Vict. c.* 42), *ss.* 1, 2.] A miner in a coal-pit complained to the oversman that part of the roof of the main roadway was unsafe. The oversman caused it to be partially secured, and told the miner to go on with his work. The miner, though he did not think it sufficiently propped, in the expectation that it would be secured in due time, continued to work, and was injured by a fall of stones.

In an action by the miner against his employers, *Held*, that the Plaintiff was entitled to damages although he continued working in knowledge of the danger. M'MONAGLE *v.* BAIRD
[9 C. of S. Cas. 364 (Sc.)

4. —— *Master's Liability—Negligence—Duty of Master to inspect Tackle for Dangerous Work—Employers' Liability Act*, 1880 (43 & 44 *Vict. c.* 42).] A workman engaged in attaching a lightning conductor to a chimney about eighty feet high was killed by the breaking of a rope suspending him. In an action by his representatives, against his employer, who provided the rope, it was proved that the rope was thick enough, and had been used for several days in raising stones of three cwts. The evidence did not shew what defect caused the accident, but experts adduced that it might have been caused by a "nip" (*i.e.* a defect in the centre) of the rope, which might have been detected by the hand of a skilled person. It appeared that no such examination had taken place before using the rope:—*Held*, that the

MASTER AND SERVANT—*continued.*

employer was liable, as he had not had the rope examined by a skilled person before use. FRASER *v.* FRASER - - **9 C. of S. Cas. 896 (Sc.)**

5. —— Negligence—Infant travelling on freight car without paying fare—Injury while attempting to perform service set him by servant of the Railway Co.:—*Held*, that Co. was not liable. SHERMAN *v.* HANNIBAL, &c., RAILROAD CO.
[37 Amer. R. 423 (U.S.)

6. —— Services rendered by employee of third person out of business hours. WALLACE *v.* DE YOUNG - - - **38 Amer. R. 108 (U.S.)**

7. ——Wages—Agreement to pay servant "what master thinks he is worth":—*Held* to mean what servant is reasonably worth. MILLAR *v.* CUDDY
[38 Amer. R. 181 (U.S.)

8. —— Wages—Agreement to serve for a year for gross sum—Servant *held* entitled to full pay, notwithstanding time lost during year's service. BAST *v.* BYRNE - **37 Amer. R. 841 (U.S.)**

—— Foreman's orders to workman—Negligence.
See NEGLIGENCE. 5.

—— Negligence of contractor's men.
See NEGLIGENCE. 7.

MEDICAL OFFICER—*Poor Law Union—Tenure of Office.*] The office of district medical officer, appointed under the Medical Appointments Order, 1857, of the Poor Law Board, is held *durante bene placito*. DONAHOO *v.* LOCAL GOVERNMENT BOARD (*or* DODSON) - **46 L. T. 300; 30 W. R. 334**

MERCANTILE AGENCY—False statements to—Third party deceived.
See FRAUD. 2.

MERGER—Of cause of action.
See FOREIGN JUDGMENT.

MINES—*Subjacent Owners—Support—Right to, for Barriers in Upper Seam partly worked.*] By indenture of lease dated 19th January, 1866, the Duke of Rutland leased to the Plaintiff two seams of coal under about 196 acres of the Duke's Staffordshire estate. The lease contained a proviso that the Duke and his tenants should not be prevented from working the coal lying underneath the demised seams, provided that such workings should not prevent or unnecessarily interfere with the working by the lessees of the demised seams. Compensation was to be made for necessary interference.

The two demised seams had, at the date of the lease, been largely worked on the part of the Duke's estate adjoining the portion demised to the Plaintiff, leaving the old workings filled with water. The Plaintiffs worked a part of these seams, leaving a barrier of coal to keep out the water. In 1876 the Duke leased to the Defendants, the Manners Co., the seams of coal lying underneath those demised to the Plaintiffs. These Defendants claimed the right of working all the coal in their seams, even underneath the Plaintiffs' barriers. The Plaintiffs alleged that such working would disturb their barriers, let the water through, and drown out their mine, and brought an action to restrain the same:—*Held*, that the Plaintiffs would, without special provision, have had an unqualified right to support from the underlying

MINES—*continued.*

strata; and that, on a true construction of the lease, a sufficient support to the barrier to keep it substantially intact for answering its intended purpose as a water-tight division had been granted by the Duke to the Plaintiffs.

An injunction was granted to restrain the Defendants from working the coal in the lower seams in such manner as to cause the barriers to sink or crack, so as to let through the water into the Plaintiff's workings on the demised land to such an extent as to interfere with such workings. MUNDY *v.* DUKE OF RUTLAND **46 L. T. 477; [30 W. R. 635**

2. —— Support, right to—Action by surface owner against mineral owner, both deriving title from same author—Injury to buildings by mining operations—Express obligation to pay damage not an implied licence to cause damage. WHITE *v.* DIXON - - **9 C. of S. Cas. 375 (Sc.)**

3. —— *Trespass — Wrongful Severance and Sale—Account—Allowance for bringing to Bank.*] Where a mine-owner has wrongfully taken the coal from an adjoining mine, if the wrongful working was simply by inadvertence, or under a *bonâ fide* mistake of title, the wrongful worker is, on an assessment of the damages he must pay, entitled to deduct from the market value the cost of severance and of bringing to bank. If, however, the wrongful act has been fraudulent, negligent, wilful, or wholly unauthorised and unlawful, only the costs of bringing to bank are allowed; the wrongful getter never being deprived of the latter costs.

The Plaintiffs and Defendants were the owners of adjoining coal mines. The Defendants' servants, without the Defendants' knowledge, trespassed on the Plaintiffs' mine, and took coal therefrom, bringing the same to the mouth of the Defendants' pit:—*Held*, that in taking an account of the sum to be paid by the Defendants for the coal wrongfully taken, the Defendants were entitled to deduct from the market value of the coal at the pit's mouth the cost of bringing the coal to bank, but not the costs of severance.

Trotter v. *Maclean* (13 Ch. D. 574) approved. JOICEY *v.* DICKINSON - **45 L. T. 643 (C. A.)**

—— Assessment of profits of—Deduction—Pits exhausted.
See REVENUE. 2.

—— Lease of—Removal of pillars of coal—Consent to.
See LEASE.

MISDESCRIPTION—Bill of sale—Grantor of.
See BILL OF SALE. 4.

—— Legatee—Parol evidence.
See WILL—CONSTRUCTION. 18, 20.

—— Liquidation petition—"Engineer."
See BANKRUPTCY—PETITION.

—— Marriage licence—Husband's name.
See HUSBAND AND WIFE—MARRIAGE. 2.

—— Statement of affairs—Holder of bill of exchange.
See BANKRUPTCY—STATEMENT OF AFFAIRS.

MISREPRESENTATION — *Advertisement*—"*Money on easy terms.*"] An advertisement was issued by the Defendant, a money-lender, headed, "Money on easy terms," and stating that money would be advanced on note of hand to farmers (amongst others) on easy terms, and on reversions, &c., at 5 per cent. No other rate of interest appeared in the advertisement. The Plaintiff, a farmer, having seen the advertisement, went to the Defendant's office, and applied for a loan of £100. He swore that the agent of the Defendant then told him he could have it at 5 per cent., and, after some negotiations, agreed to take 4½ per cent., and that he thereupon executed a bill of sale, as he believed, to secure £100 with interest at 4½ per cent., by weekly instalments. The bill of sale was, in fact, a security for the repayment of £150 by weekly instalments of £2 10*s.*

The Plaintiff having brought an action to set it aside, on the ground of fraudulent misrepresentation:—*Held*, that where a man represents to the public by advertisements that he will lend money on easy terms, and afterwards lends it on exorbitant terms, the burden lies on him to shew that he has removed from the mind of the borrower the impression produced by such representation, and has clearly explained to him the terms on which the loan has been made.

The Court coming to the conclusion that the Plaintiff's evidence was true, ordered the Defendant to deliver up the bill of sale to the Plaintiff, and to pay the costs of the action. MOORHOUSE *v.* WOOLFE - - - - **46 L. T. 374**

—— *See also* FRAUD.

—— Guarantee—Concealment of material fact.
See PRINCIPAL AND SURETY. 2.

—— Policy of insurance—Realty and personalty.
See INSURANCE—FIRE.

—— Prospectus—Consideration for becoming director.
See COMPANY—DIRECTOR. 2.

—— Reports and balance-sheets of Co.—Liability of directors.
See COMPANY—DIRECTORS. 1.

—— Sale of stock—Particulars.
See VENDOR AND PURCHASER. 4.

MISTAKE—Chief Clerk's certificate—Order to vary.
See PRACTICE—CHIEF CLERK'S CERTIFICATE.

—— Of law—Arrest of supposed lunatic.
See FALSE IMPRISONMENT.

—— Order for taxation of costs—Delay.
See SOLICITOR. 4.

—— Order—Omission from—Variation of.
See SETTLED ESTATES ACT. 2.

—— Particulars of sale—Specific performance.
See FRAUDS, STATUTE OF. 1; SPECIFIC PERFORMANCE. 1.

—— Trustee—Description of, in settlement—Practice.
See TRUSTEE. 3.

—— Will.
See WILL—CONSTRUCTION. 18—20.

MONITION—Disobedience of—Contempt.
See ECCLESIASTICAL LAW. 2.

MORTGAGE—*Advance for Investment on Mortgage — Memorandum of Investment — Insolvent Solicitor — Right to claim Portion of larger Investment.*] In 1875 L. advanced to his solicitor, C., £800 for investment on mortgage. In February, 1876, L. asked C. for some evidence of the investment, and C. then signed and gave him a memorandum stating that the £800 was in C.'s hands "at interest at 5 per cent., being part of a large sum advanced to P. on security of freehold houses at K."

C. afterwards died insolvent, and it then appeared that there was in fact no mortgage by P., but that C. and P. had in 1873 entered into a partnership arrangement for the purchase of houses at K., C. by himself or his clients providing the purchase-money, P. executing such mortgages as should be necessary for raising the same, P. paying back half the money provided by C. personally by the 1st of November, 1876, and in the meantime paying interest at 5 per cent.; and either party having the option to demand a sale after that date. On the 1st of January, 1876, nearly £7000 was due to C.:—*Held*, reversing the decision of Bacon, V.C., that L. was entitled to a charge on C.'s share of the proceeds of the sale of the houses to the extent of the £800 and interest thereon. *Re* CROWDY. BURGES *v.* CROWDY - - - **46 L. T. 71 (C.A.)**

2. —— *Attornment Clause—Distress under—Validity of—Fines.*] In a mortgage to a building society to secure the repayment of a loan of £7500 in respect of shares held by the mortgagor in the society, there was a proviso that, if default should be made by the mortgagor in payment of his subscription, interest, and fines, or in the event of his becoming bankrupt, the mortgagees might enter and sell; and it was also agreed that, if the mortgagees should become entitled to enter, and the mortgagor should then be in occupation of the premises, he should, during such occupation, be tenant thereof from month to month to the mortgagees at a monthly rent of such a sum as should be equal in amount to the moneys that ought to be paid monthly by the mortgagor, from time to time, for subscriptions, interest, fines, and other payments under the society's rules; and that such tenancy should commence upon the day up to which the said mortgagor should have fully paid up all subscriptions, interest, fines, and other moneys.

On the 14th Aug. 1878, the mortgagor made default in payment of the monthly instalments, which, by the society's rules, amounted to £71 17*s.* 6*d.* The building society distrained for rent under the attornment clause on the 2nd Dec. 1881, and also upon two subsequent occasions, in respect of similar defaults.

On the 5th Dec. 1881, the mortgagor was adjudicated a bankrupt, upon a petition filed three days before. The trustees in the bankruptcy having claimed the proceeds of the sale of the distresses:—*Held*, that the so-called rent, stipulated for by the attornment clause, could lawfully be made the subject of distress, being a mere matter of contract between the parties, and not contrary to the policy of the law or in any way excessive. *Ex parte* ISHERWOOD. *Re* KNIGHT **[46 L. T. 539**

MORTGAGE—*continued.*

3. —— *Deposit of Title Deeds unaccompanied by Writing — Subsequent registered Conveyance for Value*—Bonâ fide *Purchase without Notice—Priority—Irish Registry Act* (6 *Anne, c.* 2).] An equitable mortgagee by deposit of title deeds, unaccompanied by any written memorandum, takes priority over a purchaser for value claiming under a subsequent registered deed, without notice of such deposit. Decision of Flanagan, J. (7 L. R. Ir. 57) reversed.—*Sumpter* v. *Cooper* (2 B. & Ad. 223), and *Re Stephens' Estate* (Ir. R. 10 Eq. 282) followed. *Re M'Kinney's Estate* (Ir. Rep. 6 Eq. 445) overruled. *In re* BURKE'S ESTATE **[9 L. R. Ir. 24 (C.A.)**

4. —— *Foreclosure—Decree for Sale of Realty—Sale of unnecessarily Large Portion—Surplus Proceeds—Re-conversion.*] In a foreclosure action against L., the mortgagor, it was decreed that, in default of payment within the usual time, the mortgaged lands, or a competent part thereof, should be sold, and that out of the proceeds the mortgage, and certain other incumbrances, should be paid off, and the remainder paid to L., and that any portion of the lands remaining unsold should be reconveyed to L. More than a competent part of the lands was sold, and a surplus remained after paying off the incumbrances. An application having been made by L. to the Court to have the surplus invested in Government stock, it was granted, and the fund was so invested, the dividends on the stock being from time to time lodged by the Accountant-General to the credit of the action. A long time after L.'s death his administrator *de bonis non* brought an action for administration, and claimed the fund in Court as his personal estate as against L.'s heir-at-law:—*Held*, that the capital of the fund was to be deemed a part of L.'s realty, and, as such, to have descended to his heir-at-law. SCOTT *v.* SCOTT - - - - **9 L. R. Ir. 367**

5. —— *Foreclosure—Practice—Infant Defendant—Day to shew Cause.*] In an action for foreclosure of a legal mortgage an infant Defendant is still entitled to have a day on which to shew cause against the judgment for foreclosure, given to him. GRAY *v.* BELL - **46 L. T. 521; [30 W. R. 606**

6. —— *Foreclosure—Several Parties entitled to redeem—One Time fixed for Redemption—Sale in Foreclosure Action—Terms—Conveyancing Act*, 1881 (44 & 45 *Vict. c.* 41), *s.* 25, *sub-s.* 2.] Second mortgagees having brought an action for foreclosure against subsequent incumbrancers and the mortgagor's trustee in liquidation, and there being evidence that the sale of the property would leave a very small margin for the subsequent incumbrancers, of whom only one appeared, one time certain was fixed for all the defendants to redeem or be foreclosed. The above section gives jurisdiction to direct a sale in a foreclosure action without the Plaintiff's consent, although the mortgaged property in question may be only an equity of redemption, there being prior mortgagees not parties to the action.

The Court, however, refused so to direct a sale at the request of a Defendant who would not give security. CRIPPS *v.* WOOD - **51 L. J. Ch. 584**

MORTGAGE—*continued.*

7. —— *Partition — Conveyancing Act*, 1881 (44 & 45 *Vict. c.* 41), *s.* 25, *sub-s.* 2.] Where the interest of a tenant in common is mortgaged by him to another tenant in common, the mortgagor cannot enforce a partition or sale of the property against the mortgagee's will, except he pay off the mortgage, and the above sub-section does not affect this rule. GIBBS *v.* HAYDON **47 L. T. 184**; **[30 W. R. 726**

8. —— *Priority — Notice to Trustees—Misstatement as to Date of Incumbrance.*] A mortgagee of a reversionary estate having given to the trustees of the estate a formal notice, whereby he referred to his mortgage by a wrong date, but otherwise correctly described it:—*Held*, that the notice was sufficient, and entitled the mortgage to priority over a prior incumbrance of which notice had been given subsequently. WHITTINGSTALL *v.* KING - - - - - **46 L. T. 520**

9. —— *Reversionary Interest—Power of Sale—Setting aside improper Sale—Solicitor acting for both Parties—Negligence.*] B., who was entitled, in reversion expectant on the death of a lady aged eighty-two, to a sum of £2916 stock, obtained, through E., one of the Defendants, and a solicitor who acted for both parties, a loan of £1650 upon mortgage. The mortgage contained a power of sale upon three months' notice, or upon the interest being one month in arrear. B. stated, and it was held by the Court to be the fact, that the stock should not be saleable without six months' notice, and that E. had assured him that was the case. The interest being in arrear, the stock was sold under the power for £1950, as subject to succession duty at 3 *per cent.*

The tenant for life died within three months, and it was afterwards found that only £7 was payable as succession duty. None of the purchase-money, excepting the deposit, was paid, the remainder being left upon mortgage of the stock:—*Held*, that the sale must be set aside as improper, and at a gross undervalue, that the common mistake as to the succession duty was alone a ground for the sale being set aside; and that had it not been set aside, E. would have been liable in damages to B. for not having, as his solicitor, fully explained to him the nature of the power of sale. BETTYES *v.* MAYNARD **[46 L. T. 766; 30 W. R. 793**

—— Adoption of debt of predecessor in title.
See EXECUTOR—ADMINISTRATION.

—— Authorization by will—Power to "sell and dispose of" estate.
See WILL—CONSTRUCTION. 21.

—— Bankruptcy of mortgagor — Debt partly secured.
See BANKRUPTCY—PROOF. 1.

—— By executor, to secure trade debts.
See WILL—CONSTRUCTION. 10.

—— Deposit of deeds — Solicitor and client — Partnership action.
See PARTNERSHIP. 1.

—— Foreclosure action—Covenant to pay—Specially indorsed writ.
See PRACTICE—MOTION FOR JUDGMENT. 5.

MORTGAGE—*continued.*

—— Mining lease — Consent of mortgagor to removal of pillars of coal.
See LEASE.

—— Power of sale—Representative of deceased mortgagee.
See VENDOR AND PURCHASER. 5.

—— Tenancy in common—Decree for sale.
See PARTITION. 2.

MORTMAIN.
See CHARITY.

MOTION FOR JUDGMENT.
See PRACTICE—MOTION FOR JUDGMENT.

MOTION TO SET ASIDE JUDGMENT—Action against married woman—Judgment by default.
See PRACTICE—MOTION TO SET ASIDE JUDGMENT.

MUNICIPAL CORPORATION—*Election—Special Case—Power of High Court to order Statement of —Time—Corrupt Practices Act*, 1872 (35 & 36 *Vict. c.* 60), *s.* 15, *subs.* 6.] The Court has, under the above subsection, power to order a statement of the facts in the form of a special case in the absence of Respondents who have never appeared nor given notice that they will not oppose the petition. Observations on the time within which application to the Court must be made by a party desirous of setting aside, for irregularity, proceedings on the trial of an election petition. BURGOYNE *v.* COLLINS (No. 2) **30 W. R. 923**; **[46 J. P. 710**

—— Buildings occupied by—Rateable value.
See POOR-RATE. 2.

N.

NAME—Family—Trade-mark.
See TRADE-MARK. 1.

—— Trade.
See TRADE NAME.

NEGLIGENCE — Action by father to recover damages for death of minor child held not to be maintainable. EDGAR *v.* CASTELLO **[37 Amer. R. 714 (U.S.)**

2. —— Contributory — Jumping off train to avoid collision *held* not necessarily negligent. WILSON *v.* NORTHERN PACIFIC RAILROAD CO. **[37 Amer. R. 410 (U.S.)**
See also IRON RAILWAY CO. *v.* MOWERY, **38 Amer. R. 597 (U.S.)**

3. —— Contributory—Sparks from locomotive —Continuing to use locomotive after notice of defect—Warehouse set fire to by sparks. MARQUETTE, &c., RAILROAD CO. *v.* SPEAR **[38 Amer. R. 242 (U.S.)**

4. —— *Corporation—Swing Bridge—Infant.*] A municipal corporation is not bound to keep barriers or watchmen to protect children playing about a swing bridge maintained by the corporation. GAVIN *v.* CITY OF CHICAGO **[37 Amer. R. 99 (U.S.)**

5. —— *Employers' Liability Act*, 1880 (43 & 44 *Vict. c.* 42), *s.* 1.] A workman was injured by

NEGLIGENCE—*continued.*

the fall of machinery which he was assisting to lift in compliance with the orders of a foreman, to whose orders he was bound to, and did, conform. Circumstances under which the Court *held* that though the injury resulted from his having so conformed there had been no actionable negligence on the foreman's part in the order given or its execution. M'MANUS *v.* HAY

[9 C. of S. Cas. 425 (Sc.)

6. —— *Excavations in Private Road—Damage caused by driving into Trench.*] The Defendant, who was building houses on land adjoining a new road, not yet dedicated to the public, had caused an excavation to be made in the road for the purposes of drainage. No lights were placed to warn the persons using the road of the excavation. A servant of the Plaintiff, in driving his horses along the road after dark, drove into the excavation, thereby killing one horse and injuring the other:—*Held*, that as there was no duty cast upon the Defendant to protect any one using the road without a license, he was not guilty of negligence.—*Dictum* of Crompton, J., in *Gallagher* v. *Humphrey* (10 W. R. 664) doubted. MURLEY *v.* GROVE - - - - - - - - **46 J. P. 360**

7. —— *Servant — Removal of Refuse from Brewery—Grains spilt on Footway—Contractor's Men, Negligence of.*] Whilst refuse grains were being removed, in pursuance of a contract, from a brewery, the foreman of the brewery superintending the removal, so far as it took place inside, some of the grains were spilt upon the footpath in front of the brewery, and the Plaintiff in passing by slipped on the grains and fell, injuring himself thereby. Upon his bringing an action for damages against the brewers:—*Held*, that it was not an answer to the action for the Defendants to allege that the negligence of the contractor's men caused the accident. DUKE *v.* COURAGE - - - - - - - - **46 J. P. 453**

—— Carrier.
See CARRIER—GOODS; CARRIER—PASSENGERS.

—— Contributory—Rule of the road.
See WAY. 3.

—— Innkeeper—Loss of guest's property.
See INNKEEPER.

—— Of purchaser—Particulars of sale—Mistake.
See SPECIFIC PERFORMANCE. 1.

—— Producing permanent disability—Damages.
See DAMAGES, MEASURE OF.

—— Railway—Level crossing—Flagman.
See RAILWAY. 1.

—— Servant—Injury to—Master's liability.
See MASTER AND SERVANT. 2—4.

—— Solicitor acting for both parties to sale.
See MORTGAGE. 9.

—— Trustee—Liability.
See TRUSTEE. 5, 6, 8.

NEW TRIAL—Grounds for granting.
See PRACTICE—NEW TRIAL.

NEWSPAPER—Name—Right to exclusive use of word as.
See TRADE NAME.

NEXT FRIEND—Death of, of infant Plaintiff.
See PRACTICE—PARTIES. 5.

NEXT-OF-KIN—Of lunatic—Inquiry—Liberty to attend.
See LUNATIC. 1.

NOTICE—Act of bankruptcy "available for adjudication."
See BANKRUPTCY — PROTECTED TRANSACTION. 1, 2.

—— Appeal from County Court—"Forthwith."
See BANKRUPTCY—APPEAL. 1. 2.

—— Breach of trust, intended—Refusal to pay debt to trust estate.
See TRUSTEE. 4.

—— Building scheme—Easements necessary to complete—Plans.
See LIGHT AND AIR. 3.

—— Calls—Payment of—Service.
See COMPANY—WINDING-UP. 3.

—— Defect in locomotive.
See NEGLIGENCE. 3.

—— Inquiry before the master to assess damages—Service.
See PRACTICE—SERVICE.

—— Lien of shipowner—Charterparty.
See SHIP. 2.

—— Lien of solicitor—Policy of insurance.
See SOLICITOR. 7.

—— Of bankruptcy after giving post-dated cheque.
See BANKER. 2.

—— Of mortgage—Wrong date.
See MORTGAGE. 8.

—— Of trial.
See PRACTICE—TRIAL. 1, 2; PRACTICE—MOTION FOR JUDGMENT. 4.

—— Purchaser without—Priority.
See MORTGAGE. 3.

—— To Board of Trade—Action respecting collision.
See SHIP. 10.

—— To dismiss servant—Salary of certain sum per annum.
See MASTER AND SERVANT. 1.

—— Trust account—Banker's lien.
See BANKER. 3.

NOTICE OF ACTION—*Insufficiency of—False Imprisonment—Larceny Act*, 1861 (*24 & 25 Vict. c. 96*), *s. 113—Inaccuracy as to Date of Arrest.*] A notice of action against a constable for false imprisonment, given under the above section, was correct in all particulars, excepting that of the date of the arrest, which it gave as the 13th, instead of the 12th, of April:—*Held* (by Mathew and North, JJ., Grove, J., doubting), that the mistake in the date not being calculated to injure or prejudice the Defendant, did not invalidate the notice. GREEN *v.* BROAD & HUTT.

[51 L. J. Q. B. 640; 46 L. T. 888; 46 J. P. 599

NUISANCE—Exposing goods in front of shop.
See LOCAL GOVERNMENT.

—— Hospital for infectious diseases—Evidence—Effect of similar hospitals.
See EVIDENCE. 5.

—— Public—Fruit stand on pavement.
See CRIMINAL LAW. 18.

O.

OFFICE—Tenure of—Remembrancer of City of London.
See CUSTOM.

OFFICIAL LIQUIDATOR.
See COMPANY — WINDING-UP; POOR-RATE. 1.

OFFICIAL REFEREE.
See PRACTICE—REFEREE.

ONUS PROBANDI—Discretion of trustee—Improper use of.
See WILL—CONSTRUCTION. 1.

—— Gift from husband to wife.
See UNDUE INFLUENCE.

—— Right dependent on a negative.
See EVIDENCE. 4.

—— Ward of Court—Action to restrain removal of.
See INFANT. 2.

OVERTAKING VESSEL—Light astern—Apprehension of danger.
See SHIP. 6.

OWELTY—Allowance for permanent improvements.
See PARTITION. 1.

P.

PARCELS—Devise of messuage and "appurtenances."
See WILL—CONSTRUCTION. 22.

—— Reference to plan—General words.
See DEED. 1.

PARLIAMENT—*Election — Corrupt Practices—Prosecution for Penalties—Wilful Delay—Corrupt Practices Prevention Act*, 1854 (17 & 18 *Vict. c.* 102), *s.* 14.] The Plaintiff, on the 11th June, 1880, commenced an action against the Defendant for penalties for alleged bribery. On the 14th July a statement of claim was delivered, and on the 22nd July the Defendant obtained an order for particulars. No particulars were delivered, but endeavours were made by the Plaintiff's solicitor to effect a compromise (to which the Defendant was not a party), on the terms that the Defendant should pay him the costs of this and certain like actions. The Defendant, in August, 1881, applied to have the action dismissed:—*Held*, that the action must be dismissed, on the ground that the power given to private persons to sue for penalties for offences connected with elections is for the public benefit, and must be conducted *bonâ fide*, and that the facts shewed "wilful delay" on the part of the Plaintiff within the above statute. GUEST *v.* CALDICOTT
[45 L. T. 609; 30 W. R. 122

2. —— *Vote—County Franchise—Rent-charge.*] The Respondent, who claimed the county franchise in the county of N., was the owner of a life rent-charge of £100 a year, charged upon lands in the counties of N. and L. The annual value of the land in N. county was much more than £5, but if the rent-charge were apportioned rateably to the quantity and annual value of the land in each county, the proportion issuing out of the land in N. would be less than £5:—*Held*, that the value of the rent-charge in N. was not sufficient to confer the franchise on the Respondent. BEARN *v.* WATSON - - - - **1 Colt. 268**

PART PERFORMANCE—Parol agreement to take lease.
See FRAUDS, STATUTE OF. 5.

PARTICULARS—Action for damage to cargo—Condition of ship.
See SHIP. 11.

PARTICULARS OF SALE—Mistake in—Negligence of purchaser.
See SPECIFIC PERFORMANCE. 1.

PARTIES TO ACTION.
See PRACTICE—PARTIES.

PARTITION—*Owelty—Allowance for Permanent Improvements.*] By the marriage settlements of two sisters, freehold and leasehold property of which they were tenants in common was settled upon them in the usual way. By a subsequent agreement, the property was to be partitioned and held in severalty on the trusts of the settlements, a sum of money being paid for owelty or equality of partition. That sum was never paid, but interest was paid on it. The parties entitled under each settlement took possession of the property allotted to them respectively, and spent money in improvements. A larger expenditure having been made on that property which was originally the more valuable, its value increased to a greater extent than did that of the other. Children were born of each marriage, and an action for partition on the basis of the agreement was begun:—*Held*, that, in calculating the amount to be paid for owelty, one half the difference between the present values of the properties should be taken, after deducting the expenditure on each in permanent improvements.—*Parker* v. *Trigg* (W. N. 1874, p. 27) followed. WATSON *v.* GASS - - **51 L. J. Ch. 480; 45 L. T. 582; [30 W. R. 286**

2. —— *Sale—Right of Tenant-in-Common to Decree for, against co-Tenant who is Mortgagee of Entirety.*] One of the tenants-in-common of real estate which was subject to a mortgage in fee, procured an assignment of the mortgage, and obtained possession under it:—*Held*, that, in an action for partition this did not take away his co-tenant's right to a decree for sale, subject to the incumbrance. Form in *Re Hardiman, Pragnell* v. *Batten* (16 Ch. D. 360) adopted. WAITE *v.* BINGLEY - **51 L. J. Ch. 651; 30 W. R. 698**

—— Action for—Preliminary decree—Evidence of will.
See EVIDENCE. 11.

—— Enforcement of, by tenant-in-common who has mortgaged his interest to another tenant.
See MORTGAGE. 7.

—— Practice—Parties out of jurisdiction—Service on.
See PRACTICE—PARTITION.

PARTNERSHIP—*Articles of—Solicitor and Client—Deposit of Deeds — Partnership Action—Receiver.*] R., the client of a firm of solicitors,

PARTNERSHIP—*continued.*

deposited money with them for investment. They made no investment at the time, but applied the money to their own use. After the death of one of the partners, his executors commenced a partnership action, in which H., the surviving partner, was appointed one of two receivers. H., without communicating with either his co-receiver or with R., put certain deeds forming part of the partnership property into a box with R.'s name outside. R. subsequently obtained possession of these deeds, and claimed to retain them as security for the money owing to her by the firm. There was a clause in the articles of partnership providing that, on the death of either partner, the surviving partner should, within six months of the next general annual account, pay to the deceased partner's representatives his share of the year's profits, and should execute a bond for payment to them within two years of the share of the deceased partner's capital:—*Held*, that R. must deliver up the deeds to the receiver in the partnership action, for H. had not power to give R. a security on them. HILLS *v.* REEVES [30 W. R. 439

2. —— Constitution of—Contract between partner and third person, with assent of other partners, that third person should share with contracting partner in his partnership profits and losses:—*Held*, not to make a third person a partner. BURNETT *v.* SNYDER [37 Amer. R. 527 (U.S.)

3. —— *Dissolution—Action for—Return of Premium.*] The mere fact of delay on the part of a partner in furnishing further capital according to partnership articles, is no ground for rescission of the contract of partnership, or, in case of dissolution, for depriving the partner of the right to a return of the premium he paid on becoming a partner. An action for dissolution of partnership was commenced by one of the partners, who had paid a premium on entrance into the partnership. The other partner immediately afterwards commenced a cross-action for dissolution, and the first partner then filed affidavits in his action containing imputations of misconduct against the other partner, but which he did not sustain. One decree for dissolution was made in the two actions, which were substantially one litigation:—*Held*, that the making of the imputations was not such misconduct as to disentitle the party who made them to a return of his premium. The mere incompetence, however great, of a partner, is not a bar to the return of any part of his premium, unless such incompetence has caused damage or injury, in which case it may be taken into account in determining how much of the premium shall be returned. *Per* Holker, L.J.: Where a business man takes a partner, and requires a smaller sum as premium, believing that he will prove of material service in the partnership, and the new partner turns out utterly incompetent, such incompetence may possibly be a good reason for not allowing the return of the whole premium.

Where an inquiry was directed to be made in chambers as to the amount of premium to be returned to one partner on a dissolution of partnership, and a certain amount was certified by the chief clerk, whose certificate was afterwards confirmed by the Judge and the Court of Appeal, the Court directed interest on the amount to be paid from the date of the certificate. BREWER *v.* YORKE (No. 1) [46 L. T. 289 (C. A.)

4. —— *Fraud of Partner—Liability of innocent Partner—Sale by the Court—Authority of Solicitor to receive Deposit from Auctioneer.*] It is within the ordinary business of solicitors having the conduct of a sale, to pay the deposits into Court for the auctioneer. The deposit received on a sale (made by order of the Court), was sent by the auctioneer to the Plaintiff's solicitors, who had conduct of the sale, to be paid into Court. One of the members of the firm received it and misappropriated it. The question being raised whether the auctioneer should not have himself paid this deposit into Court, and whether he was not, therefore, liable to pay it over again:—*Held*, affirming the decision of Bacon, V. C., that the innocent members of the firm were liable to make good their partner's defalcation, since the receipt and payment into Court of the auctioneer's deposit was within the ordinary business of the solicitors to the party who had conduct of the sale. BIGGS *v.* BREE 51 L. J. Ch. 263; [46 L. T. 8; 30 W. R. 278 (C.A.)

5. —— *Property.*] Realty purchased with partnership funds for partnership uses, though the title be taken in the name of one partner, is treated as personalty, so far as is necessary, to pay the partnership debts, and adjust the equities of the partners. SHANKS *v.* KLEIN 14 Otto, 18 (U.S.)

6. —— *Receiver and Manager — Surviving Partner disqualified by Attempts to secure Goodwill for himself.*] Pending the winding-up of a partnership business, dissolved by the death of a partner, it is a ground for the appointment of a receiver and manager, and for not appointing the surviving partner to that office, that the latter has, whilst carrying on the business after his partner's death, so acted as to diminish the value of the assets by transferring to a new business to be carried on by himself the benefit of the custom and goodwill of the partnership business.

Upon the death of one of two partners the survivor continued to carry on the business, and whilst so doing, excluded the husband of the daughter and representative of the deceased partner from the partnership premises, took a new shop near the old one, and used his influence with the customers of the old business to divert them to the new one:—*Held*, that a receiver and manager of the partnership business must be appointed until sale, and that the appointment could not be given to the surviving partner. YOUNG *v.* BUCKETT 46 L. T. 266; 30 W. R. 511

—— Action against—Default in appearance. *See* PRACTICE—PLEADING. 2.

—— Action not claiming dissolution—Receiver. *See* PRACTICE—RECEIVER. 2.

—— Articles—Reference of disputes—Time. *See* ARBITRATION. 4.

—— Authority of partner—Indorsement of note. *See* BILL OF EXCHANGE. 3.

PASSENGER.

See CARRIER—PASSENGERS; RAILWAY.

PATENT — Infringement — Combination — Construction of self-glazing or glass-fixing metal bars for roof lights. PENNYCOOK PATENT GLAZING Co. *v.* MACKENZIE - **9 C. of S. Cas. 414 (Sc.)**

2. —— *Infringement — Slander of Title — Notices by Patentee alleging Infringement — Mala fides — Untrue Statements — Injunction.*] In an action brought to restrain the Defendant from issuing to the Plaintiff's customers notices that the Plaintiff in selling certain goods is infringing the patent rights of the Defendant, it is for the Plaintiff to prove that the Defendant's statements are untrue; and if no *mala fides* is proved, and no damages could be obtained, the Court will refuse to grant an injunction.

If, however, in any judicial proceeding the statements are proved to be false in fact, an injunction against their continuance would be granted, as that would be acting *mala fide*.

Halsey v. *Brotherhood* (15 Ch. D. 514) commented upon and explained. BURNETT *v.* TAK [**45 L. T. 743**

3. —— Specification — Combination — Two separate inventions. HENDERSON *v.* CLIPPENS OIL Co. - - - **9 C. of S. Cas. 232 (Sc.)**

4. —— *Validity — Combination — Specification — Utility, Evidence of — Novelty.*] Where a person discovers a new principle or idea respecting some art or manufacture, and at the same time shews a method of carrying it into practice, as by a machine, he may patent the combination of principle and method, although neither the idea nor the machine would be separately patentable.

The description, in a specification, of a machine suffices if it informs the maker and user how, without employing any inventive faculty, to make and use the machine, even though parts of it, without which it would be unworkable, have been omitted from the specification.

Although the fact that the patentee does not make and sell his machine, is *primâ facie* evidence of want of utility, it is not sufficient to prove want of utility if immediately afterwards the patentee has improved upon his machine, and has made and sold the improved machine.

Where want of novelty in a patented machine is set up, and the alleged anticipation is in writing only, as for instance, the specification of another's prior patent, no existence of a prior machine being shown, the interpretation of the prior writing is for the Court, and it is not sufficient to establish want of novelty to shew that, if a machine had been made by a person who had read that writing, and such machine had been used, something in it would by user have been an anticipation; but it must be shewn that a person conversant with such matters would, on reading the writing, find a reasonably clear description of the impeached invention in the writing alone. OTTO *v.* LINFORD [**46 L. T. 35 (C. A.)**

PAVING EXPENSES — "Charge on the premises."
See PUBLIC HEALTH ACTS. 2.

—— Right of action for.
See TOWNS IMPROVEMENT CLAUSES ACT.

—— Undertaking to construct roadway.
See ROADWAY.

PAYMENT OUT OF COURT — Infant — Testamentary guardian.
See PRACTICE — PAYMENT OUT OF COURT.

PENALTY — Contract not to carry on trade.
See CONTRACT. 4.

—— Elementary Education Acts — Distress warrant.
See ELEMENTARY EDUCATION ACTS. 3.

—— Prosecution for — Delay — Corrupt practices.
See PARLIAMENT. 1.

PETITION — Bankruptcy.
See BANKRUPTCY — PETITION.

—— Winding-up — Affidavit — Statement as to belief.
See COMPANY — WINDING-UP. 1.

PHOTOGRAPH — Admissibility in evidence.
See CRIMINAL LAW. 7.

PLAN — Reference to, in conveyance — General words.
See DEED. 1.

PLATFORM — Station — Condition of.
See CARRIER — PASSENGERS. 3.

POLICY OF INSURANCE.
See INSURANCE.

POOR LAW — *Removal, Order of — Abandonment — Costs — Union Chargeability Act*, 1865 (28 & 29 *Vict. c.* 79), *s.* 3.] The above section applies to costs on abandonment of an order of removal; where, therefore, such an order has been obtained, and then abandoned, by the guardians, the union upon which it was made is entitled to costs incurred in respect of it in the same manner as were, before the Act, parish overseers. REG. *v.* SHEIL - - - - **30 W. R. 134**

2. —— *Settlement by Residence for 3 years — Child under 16 — Derived Settlement — Poor Law Amendment Act*, 1876 (39 & 40 *Vict. c.* 61), *ss.* 34, 35.] A pauper, whose settlement by birth and parentage was in the Union of W., had, before he was 16 years of age, resided in the Union of M., for the period and under the circumstances to acquire a residence within sect. 34 of the above Act: — *Held*, on appeal from an order of removal to the Union of W., that the order of removal was bad; for the 1st paragraph of s. 35 of the same Act refers only to derived settlements, and there was nothing in that section to prevent the pauper from acquiring a settlement under the 34th section, WOLSTANTON UNION *v.* NORTHWICH UNION [**46 L. T. 528; 46 J. P. 377**

—— Medical officer — Tenure of office.
See MEDICAL OFFICER.

POOR-RATE — *Assessment of Joint Stock Co. and its Official Liquidator — Liability of Liquidator upon Distress for non-Payment of Co.'s Rates.*] Premises which had been occupied by a joint-stock Co. were assessed to the poor-rate whilst the Co. was being wound up by order of the Court, and whilst the official liquidator was carrying on its business on the premises. In the rate book appeared the name of the Co and that of the liquidator, with the addition: "Official Liquidator." The rate not being paid, application was made to a magistrate for a distress-warrant upon the liquidator's goods, but was refused: — *Held*, upon a rule to compel the magis-

POOR RATE—*continued.*

trate to issue the warrant, that the rule must be discharged, for whether or not the liquidator was in form rated as the occupier of the premises, he was not such an occupier as to be liable for the rate in respect of his personal goods. REG. *v.* CURZON. *Re* LESLIE **46 L. T. 159; 30 W. R. 521**

2. —— *Rateable Value—Buildings occupied by Municipal Corporation for Purposes defined by Statute.*] In order to ascertain, for the purpose of parochial assessment, the gross estimated rental and rateable value of buildings occupied by municipal corporations and other public bodies reference must be made to the amount which a tenant, unfettered as to user and unrestricted as to charges, would give as rent if the premises were in the market, and not by reference to the annual profit, if any, which those who use the premises make or might make.—*Corporation of Worcester* v. *Droitwich Union* (2 Ex. Div. 42) distinguished. CHORLTON-UPON-MEDLOCK OVERSEERS *v.* GUARDIANS OF CHORLTON UNION - **51 L. J. Q. B. 458; [47 L. T. 96; 46 J. P. 535**

3. —— *Valuer—Appointment of, by Union Assessment Committee—Expenses of Valuation—Liability of Guardians*—25 & 26 *Vict. c.* 103, *ss.* 26, 37.] Where a valuer, appointed by the assessment committee of a board of guardians under sect. 26 of the above Act, has incurred expenses which have not been allowed by the committee according to sect. 37 of the Act, no action will lie against the guardians in respect of such expenses. RICHARDSON *v.* MADELEY UNION GUARDIANS **[46 J. P. 439**

POST OFFICE—Acceptance through the post of offer.

See CONTRACT. 1.

—— Telegrams—Evidence.

See EVIDENCE. 9, 10.

POWER OF APPOINTMENT—*Exercise—Revocation—Release—Indirect Benefit to Appointor—Conveyancing Act*, 1881 (44 & 45 *Vict. c.* 41), *s.* 52.] By a settlement made in contemplation of the marriage (which took place shortly after) of the Plaintiff (the husband), a power of appointment over a trust fund, to be exercised by deed or will, was given to him in favour of the children of the marriage. In default of appointment the fund was to be divided equally amongst the children. There were four children of the marriage, one of whom died, a bachelor and intestate, in 1869. The Plaintiff was his personal representative. In 1876 the Plaintiff made an appointment by deed in favour of his three surviving children, reserving to himself, however, a power of revocation. In 1880 he revoked by deed the appointment he had made in 1876, so that the property might stand as theretofore.

The Plaintiff proposed to execute an absolute release of the power of appointment, and submitted that by so doing he would become entitled to a share of the trust fund. The Defendants alleged that the deed of 1880 was executed by the Plaintiff in order that he might claim the share of the deceased child for his own benefit, and that his intention was to commit a fraud on the power:—*Held*, that it was competent for the donee of a power to exercise it and at the same

POWER OF APPOINTMENT—*continued.*

time reserve to himself a power of revocation; and that the Plaintiff, upon executing a proper release, would be entitled to the share he claimed, for although, in this case, by an accident, viz., the death of one of the objects of the power, the Plaintiff would himself derive a benefit through his having reserved a power of revocation, yet he could not be regarded as having committed a fraud on the power. SHIRLEY *v.* FISHER **[47 L. T. 109**

2. —— *Hotchpot Clause—Rectification of Deed by inserting—Form of Judgment Order.*] The donee, under four different instruments, of powers of appointment amongst her three daughters, by four separate deeds-poll appointed one-third of the several properties, subject to the powers, to one daughter, and died without having otherwise exercised any of the powers. Only one of the instruments by which the powers were created contained a hotchpot clause:—*Held*, upon the evidence, that there appeared on the appointor's part, a clear intention to produce an equality between the three daughters, and that, as the usual hotchpot clauses had been inadvertently omitted from the three deeds-poll, they must be rectified by the insertion of clauses of that nature. Form of order. KILLICK *v.* GRAY **46 L. T. 583**

3. —— *Objects to take equally in Default—Absence of Hotchpot Clause—Appointment by Indenture (executed by Object) of part of Fund "as and for her full share or proportion"—Appointee entitled to Share in Unappointed Residue.*] Where by a settlement of 1857, containing no hotchpot clause, a fund was settled (after the usual life interests) on the children of the marriage as their mother, J., should appoint, and, in default of appointment, equally: and J., by a deed of 1855, after reciting a desire to appoint to her daughter H. £2000, part of the fund, "as and for her full share and proportion thereof," accordingly appointed to her "the sum of £2000, part of and as and for her full share or proportion of and in" the fund—the appointment being made by indenture, which was also executed by H.:—*Held* (by Deasy and Fitz-Gibbon, L.JJ., *diss.* Lord O'Hagan, C.) reversing the decision of Chatterton, V.-C.), that H. was not precluded from claiming her distributive share in the ultimately unappointed residue of the fund. CLOSE *v.* COOTE - **7 L. R. Ir. 564 (C.A.)**

4. —— *Will, Exercise by—Deviations from Power—General Residuary Devise and Bequest to Surviving Children (Objects of the Power).*] The testator had, under the settlement made on his first marriage, as survivor of his first wife and himself, a power of appointment, by deed or will, of certain moneys among the children of his first marriage; and had also, under his second marriage settlement, a power of appointment, after the death or second marriage of his second wife, of a fund settled upon her for life or widowhood. The testator by his will referred to and confirmed his first marriage settlement, and directed the trusts thereof to be fully carried out; and he also referred to and confirmed his second marriage settlement, and directed the investment of a fund to provide the annuity for his second wife's life. After making other bequests, as to all the rest, residue, and remainder of his real and personal

POWER OF APPOINTMENT—*continued.*

estate, and which he should in any way have power to dispose of or appoint by will, he gave, devised, and bequeathed the same unto and to the use of his executors and trustees upon trust for conversion, and out of the proceeds to pay his funeral and testamentary expenses and debts, and legacies, and to divide the residue thereof among such of the children of his first marriage as should be living at his death, but as to the shares of his daughters therein, he settled them on his daughters for life, then on their husbands for life, then on the issue of the daughters as they should appoint, and in default of such appointment then to his daughters' children, as to sons at 21, as to daughters at 21 or marriage, and in default of daughter's children, then as his daughters should generally appoint, and in default of such appointment, then for his daughters' next-of-kin:—*Held*, that the will operated as an exercise of the power to appoint among the children of his first marriage the fund settled on that marriage, and which was vested in him, under his first marriage settlement, as being the survivor of himself and his first wife, although the testator had (1) described the residue which he gave as the residue of "my estate;" (2) directed its conversion; (3) directed payment of funeral and other expenses, debts, and legacies thereout, and (4) settled the shares of the daughters for the benefit of their respective husbands and children. PRICE *v.* PRICE - - - - - **46 L. T. 228**

5. —— *Will, Exercise by—Power to appoint by Will given to Survivor of two Life Tenants—Will made by Survivor, before actually becoming such—Wills Act*, 1837 (1 *Vict. c.* 26).] By the marriage settlement of A. and B., a sum of £10,000 was settled, upon their death, in trust for their children, according as A. and B. during their joint lives, by deed, or as the survivor, by deed or will, should appoint, and in default of appointment for the children absolutely. A, whilst B was still alive, made a will, by which, after certain bequests, he gave all the real estate and the residuary personalty of or to which he was or should be at his decease possessed or entitled, or have power to dispose of by will, to his wife; but in case (which happened) she should die in his lifetime, then upon trust for his son for life, remainder to his (testator's) grandson (an infant), and if his grandson should die under 21 without issue, then for a stranger to the power, with executory devises over. The question whether the will operated as a valid exercise of the power having been raised:—*Held*, that the power, being special, and given to the survivor of two persons, was not well exercised by a will made during the lives of both the persons, by the one who afterwards became the survivor; and that even had the testator when he made the will been actually survivor, the words of the will were insufficient to include property over which he had a merely special power of appointment. *Re* MOIR'S SETTLEMENT TRUSTS **46 L. T. 723**

—— Power coupled with a trust.
See WILL—CONSTRUCTION. 23.

—— Will, exercise by—Revocation of will.
See ADMINISTRATOR. 6.

POWER OF LEASING—"Reasonable and proper" exercise.
See LEASE.

—— To "person or persons"—Limited company.
See WILL—CONSTRUCTION. 24.

PRACTICE:—

I. ADMIRALTY.
II. ADVICE OF COURT.
III. APPEAL.
IV. ATTACHMENT OF PERSON.
V. CHIEF CLERK'S CERTIFICATE.
VI. COSTS.
VII. DISCONTINUANCE.
VIII. DISCOVERY—DOCUMENTS.
IX. DISCOVERY—INTERROGATORIES.
X. DIVORCE.
XI. JOINDER.
XII. MOTION FOR JUDGMENT.
XIII. MOTION TO SET ASIDE JUDGMENT.
XIV. NEW TRIAL.
XV. PARTIES.
XVI. PARTITION.
XVII. PAYMENT OUT OF COURT.
XVIII. PLEADING.
XIX. RECEIVER.
XX. REFEREE.
XXI. SERVICE.
XXII. STAYING PROCEEDINGS.
XXIII. TRIAL.
XXIV. WRIT.
GENERAL.

I. PRACTICE—ADMIRALTY—*Bail—Collision—Admiralty Court Act*, 1861 (24 *Vict. c.* 10), *s.* 34—*Counterclaim.*] When a ship, against which a damage action has been instituted, is not arrested, the Defendants, even though they give bail voluntarily, cannot compel the Plaintiffs to give security to answer a counterclaim in the action, under the above section. *The* "ALNE HOLME" (2nd Action) - - - **47 L. T. 307**

2. —— *Bail—Sale of Ship in another Action—Payment of Proceeds into Court.*] Where, in a damage action, after judgment against a ship, bail has been given and the ship released, and judgment is given in a necessaries action against the same ship, and the ship is sold and the proceeds paid into Court, the Plaintiffs in the damage action cannot be paid out of such proceeds, to the prejudice of other claimants still having maritime liens upon the same. *The* "FALK" - - - - **47 L. T. 308**

—— Appeal to Privy Council from Admiralty Court.
See PRACTICE—APPEAL. 4.

—— Particulars—Action for damage to cargo.
See SHIP. 11.

II. PRACTICE—ADVICE OF COURT—*Application for—Signature of Counsel*—23 & 24 *Vict. c.* 38, *s.* 9—*Judicature Act*, 1873, *s.* 100—*O. XIX. r.* 4] Applications under 22 & 23 Vict. c. 35, s. 30, for the advice of the Court, still require the signature of counsel, notwithstanding O. XIX. r. 4. *Re* BOULTON'S TRUSTS - **51 L. J. Ch. 493; [30 W. R. 596**

II. PRACTICE—ADVICE OF COURT—*continued.*

—— Petition for—Power of Court on—Amendment.

See SETTLED ESTATES ACT. 6.

III. PRACTICE—APPEAL—*Jurisdiction of Court of Appeal—Action remitted to County Court for Trial—Application for New Trial—Appeal from Divisional Court—County Courts Act*, 1856 (19 & 20 *Vict. c.* 108), *s.* 26—*Judicature Act*, 1873 (36 & 37 *Vict. c.* 66), *s.* 45.] Where, under s. 26 of the County Courts Act, 1856, an action, brought in a superior Court, has been, after joinder of issue, remitted to a County Court for trial, the action still remains in the superior Court, and an appeal from the refusal of a Divisional Court to grant a new trial will lie without special leave.—*Bowles* v. *Drake* (8 Q. B. D. 325) distinguished. BABBAGE *v.* COULBURN (No. 1) - **46 L. T. 515 (C.A.)**

2. —— *Leave to—Appellant not a Party to Action.*] Leave will not be given to a person to appeal from an order made in an action to which he is not a party, unless his interest is such that he might, by service, have been made one. CRAWCOUR *v.* SALTER (No. 2) **30 W. R. 329 (C.A.)**

3. —— *Security for Costs, failure to give—Dismissal—Form of Order.*] Upon the failure of an intending Appellant to find security for costs, ordered to be given by him within a certain time, his right of appeal is gone for good, although the usual period for appealing has not expired; and his appeal will be dismissed with costs. The form in Seton (p. 1614; 4th ed.) is the correct one. HARRIS *v.* FLEMING **30 W. R. 555 (C.A.)**

4. —— *Time — Peremption — Jurisdiction of Calcutta High Court in Admiralty.*] The time within which an appeal from the judgment of a Vice-Admiralty Court may be brought is governed strictly by the Rules made by the Order in Council of 27th of June, 1832. Fifteen days is, by the practice of the Court, the limit within which appeals from any Court of Admiralty jurisdiction may be brought. In any Admiralty or Vice-Admiralty cause the right of appeal to the Privy Council is perempted by any proceedings being taken by the Appellant under the decree to be appealed from. Observations on the Admiralty jurisdiction of the High Courts in India. *The* "BRINHILDA" - . - **45 L. T. 389**; **[4 Asp. M. L. C. 461 (P.C.)**

—— Bankruptcy.

See BANKRUPTCY—APPEAL.

—— Bastardy order.

See BASTARDY. 1.

—— Costs.

See PRACTICE—COSTS. 2.

—— Staying proceedings pending.

See PRACTICE—STAYING PROCEEDINGS.

IV. PRACTICE—ATTACHMENT OF PERSON—*Release—Enforcement of Undertaking by Defendant's Solicitor given out of Court.*] The Defendant in an action in the Chancery Division having been imprisoned for contempt, his solicitors, in order to induce the Plaintiffs' solicitors to give their consent to his release from arrest, entered into an undertaking, unconditional in terms, to pay an agreed sum as the costs of the application for his committal.

IV. PRACTICE—ATTACHMENT OF PERSON—*—continued.*

The Defendant's solicitors not having performed the undertaking, the Plaintiffs moved for a summary order that the Defendant's solicitors (to whom the notice of motion was directed) should be ordered to pay to the Plaintiffs or their solicitors the agreed sum, pursuant to the undertaking, and the costs of that application. There was a conflict of evidence as to whether the undertaking was intended to be unconditional, or conditional only upon its being in accordance with the practice of the Court (which it was now admitted was not the case) to make the order for release only on terms of payment of costs:—*Held*, that there must be an order in the terms of the notice of motion; the Court before which the action was pending having jurisdiction to entertain the application, the application being properly made, and the Court being of opinion, upon the evidence, that the undertaking was unqualified in its terms. *Re* WOODFIN AND WRAY - **51 L. J. Ch. 427**; **[30 W. R. 422**

—— *See* also CONTEMPT OF COURT.

—— Solicitor—Unqualified person acting as.

See SOLICITOR. 12.

V. PRACTICE—CHIEF CLERK'S CERTIFICATE—*Order to vary—Alteration of original Certificate.*] When a formal order to vary the chief clerk's certificate has been made, it is not the practice to actually alter the original certificate.

The decision of Fry, J. (45 L. T. 469; 30 W. R. 119), affirmed.

Where the amendment of a trifling mistake in the certificate is ordered, it is the practice not to draw up a formal order, but to make a note of the amendment in the margin of the certificate. FOX *v.* BEARBLOCK (No. 3) - **46 L. T. 145**; **30 W. R. 342 (C.A.)**

VI. PRACTICE — COSTS — *Administration — Assignee in Bankruptcy of Administratrix.*] The assignees in bankruptcy of an administratrix are not entitled to their costs of an action to administer the assets of the deceased when the administratrix is found to be indebted to the estate. JAMES *v.* RICHARDSON - **9 L. R. Ir. 383**

2. —— *Appeal.*] In case an Appellant is successful only upon a point upon which the Court below has not adjudicated, he will not, as a general rule, be allowed his costs. GODDARD *v.* JEFFREYS - - - **46 L. T. 904 (C.A.)**

3. —— *Co-Defendants—Contribution.*] Where an order is made in an action that co-Defendants shall pay costs, one of the co-Defendants cannot, by a separate action, enforce contribution against another co-Defendant in respect of the costs. MIDDLEWEEK *v.* DEARSLEY - **45 L. T. 404**

4. —— *Corporation, Action against—Joinder of individual Members as Defendants for purposes of Costs only.*] In an action to restrain a vestry from an illegal application of parish funds, the members of the vestry who had voted for such application of the funds were made co-defendants with the vestry, costs being claimed against the Defendants other than the vestry:—*Held*, that to make the individual members of the vestry defendants for the purpose merely of making them pay costs, was irregular, and that, as no costs

VI. PRACTICE—COSTS—*continued.*

were asked for against the vestry, an indemnity to the vestry from costs occasioned to it by the individual Defendants having led the vestry astray was unnecessary, and that the action, as against the individual Defendants, must be dismissed, but without costs. ATT.-GEN. *v.* BERMONDSEY VESTRY [51 L. J. Ch. 843; 46 L. T. 852; 30 W. R. 872

5. —— *Elegit—Inquisition—O.* XLII., *r.* 13; *O.* LV., *r.* 1.] An execution creditor, in possession of the debtor's lands under a writ of *elegit*, is not entitled to an order to ascertain and add to the sheriff's costs of issuing the execution his own costs incidental to the suing out of the writ and of the inquisition held thereon: so long, at any rate, as he remains in possession of the lands. MAHON *v.* MILES - 45 L. T. 540; 30 W. R. 123

6. —— *Motions—Railway Companies—Compulsory Purchase of different Parts of same Estate—Amalgamation—Purchase-money lodged in Court—Payment out in discharge of Incumbrance—Three Motions.*] Three several railway companies took, under their compulsory powers, three distinct parts of an estate belonging to one person as tenant for life. The purchase-money payable by each company was paid into Court, and, petitions being presented for investment, one of these became attached to the Rolls, and the other two to the Vice-Chancellor's, Court. Two of the companies were afterwards amalgamated. Three motions for payment in discharge of an incumbrance were served on behalf of the tenant for life in the three matters, and the matter attached to the Rolls Court having been transferred to the Vice-Chancellor:—*Held*, that (1) only the costs of two motions should be allowed, and (2) that the costs should be shared equally by the two subsisting companies. *Re* THE MIDLAND GREAT WESTERN RAILWAY CO. *Ex parte* LORD DILLON [9 L. R. Ir. 16

7. —— *Party successful on one of several Issues—Discretion of Judge at Trial—Depriving successful Party of Costs—Judicature (Ireland) Act*, 1877, *s.* 53 (*similar to O.* LV., *r.* 1).] Where a Judge at the trial refuses costs to a successful party, the Divisional Court will not, in general, interfere with his discretion. Where a Defendant, having paid money into Court, obtained a verdict on that plea, but failed upon issues joined on pleas in bar, the Court refused to vary the order of the Judge at Nisi Prius refusing the Defendant costs. KEARNEY *v* HARRISON 10 L. R. Ir. 17

8. —— *Security for—Foreign Plaintiff—Action for Dissolution of Partnership carried on in England—Property in England.*] The Plaintiff and Defendant carried on a partnership business in London, but the former resided in Germany, the latter in London. The capital and stock-in-trade were provided by the Plaintiff alone. An action having been brought by the Plaintiff for dissolution of partnership and for an account, the Defendant moved for security for costs, on the ground that the Defendant was a domiciled German subject, and resident abroad. It was admitted in the affidavits that a substantial sum would ultimately be payable to the Plaintiff:—*Held*, that no security for costs would in such a case be required, as the Plaintiff had admittedly

VI. PRACTICE—COSTS—*continued.*

substantial property in this country. *Semble*, in all ordinary cases an application for security for costs should not be made by motion, but by a summons in chambers. HAMBURGER *v.* POETTING [47 L. T. 249; 30 W. R. 769

9. —— *Settled Estates Act*, 1877 (40 & 41 *Vict. c.* 18), *ss.* 17, 25—*Trustee Relief Act*, 1859 (22 & 23 *Vict. c.* 35), *s.* 30—*Tenant-for-Life—Actions for Protection of Estate—Past Litigation sanctioned—Solicitor and Client Costs.*] A petition was presented, by the trustees of settled estates, under The Trustee Relief Act, 1859, s. 30, asking the opinion of the Court as to (1) whether they were justified in applying money in their hands, proceeds of sales, and enfranchisements of the settled estates, towards paying costs incurred by the tenant-for-life in a series of actions undertaken by him to resist rights of common over the estates; (2) whether they might apply similar sums to be derived from future sales, towards discharging their costs; (3) whether such costs might be treated as between solicitor and client; and (4) whether they might adopt the tenant-for-life's proceedings. The petition was also entitled in the Settled Estates Act, 1877, under which the trustees prayed that such costs as were not provided for as above might be raised and paid as between solicitor and client by means of a charge on the settled estates:—*Held*, that the questions could be answered in the affirmative, and that the order for raising and paying the residue of the costs as between solicitor and client might be made under sect. 17, although no application had been made to the Court previously to the above-mentioned proceedings being commenced. *Re* EARL DE LA WARR'S SETTLED ESTATES - - 51 L. J. Ch. 407; 46 L. T. 340

—— Abortive inquiry—Costs of and incidental to.
See LANDS CLAUSES ACT. 4.

—— Administration action by trustee.
See EXECUTOR—ACTIONS. 1.

—— Auctioneer made party to action for specific performance.
See FRAUDS, STATUTE OF. 1.

—— Bill of—Taxation.
See SOLICITOR. 1–5.

—— County Court—Charges in "conduct of suit."
See COUNTY COURT. 1.

—— Distress warrant to enforce penalty.
See ELEMENTARY EDUCATION ACTS. 3.

—— Divorce—Petition for alimony *pend. lite.*
See PRACTICE—DIVORCE. 1.

—— Jurisdiction of Chancery and Probate Divisions as to.
See ADMINISTRATOR. 2.

—— New trial—Costs of previous trial.
See PRACTICE—NEW TRIAL.

—— Poor law—Abandonment of order of removal.
See POOR LAW. 1.

—— Receiver—Summons.
See COMPANY—WINDING-UP. 10.

—— "Reference"—Award.
See ARBITRATION. 3.

—— Security for, of appeal—Failure to give.
See PRACTICE—APPEAL. 3.

VI. PRACTICE—COSTS—*continued.*

—— Settled Estates Act.

See SETTLED ESTATES ACT. 4, 6, 7.

—— Shorthand notes of evidence.

See LEASE.

VII. PRACTICE — DISCONTINUANCE — *G. O. XXII. r.* 1 *(Ireland).*] In an action against several Defendants, a notice wholly discontinuing the action as against some of the Defendants is irregular, and will be set aside. The proper course for the Plaintiff to adopt is to obtain leave to withdraw his cause of complaint as against such Defendants.

A Plaintiff is entitled under the above rule, by leave of the Court or a Judge, to discontinue his action wholly, so far as some of the Defendants are concerned, and to strike out such Defendants from the claim, where the causes of action against such Defendants are in the alternative, and distinct from the causes of action alleged against the other Defendants. CARLISLE *v.* BELFAST BOARD OF GUARDIANS - - - **10 L. R. Ir. 36**

VIII. PRACTICE—DISCOVERY—DOCUMENTS — *Action for Recovery of Land — Affidavit of Documents—Sufficiency of—O. XXXI. rr.* 11, 12, 13.] Under the above order the Defendant in an action for the recovery of land is compellable to make an affidavit of documents relating to the matter in question, and in his possession. WRENTMORE *v.* HAGLEY - - - **46 L. T. 741**

2. —— *Bankruptcy — Bankruptcy Act,* 1869 (32 *&* 33 *Vict. c.* 71), *s.* 96.] Under the trusts of a deed executed in 1834 a sum of £2000 was *inter alia* due to Y., trading as Y. & Co. Y., in 1838, took H. as a partner, and a deed of partnership was executed. The firm B. & Co. (the liquidating debtors) became eventually, after various changes, the business successors of Y. & Co., and in an action for the administration of the trusts of the deed of 1834 the trustee in B. & Co's liquidation claimed the debt due under that deed. The trustee, in order to prove his title, summoned the surviving executor of Y., who died in 1841, for examination under the above section, and it appeared from his examination that the deed in question was in his solicitor's possession, though under his control: — *Held,* that unless there was *primâ facie* evidence that the debt formed part of the debtors' property the executor of Y. was not bound to produce the deed. *Ex parte* SMITH. *Re* BEVAN & Co. **45 L. T. 447**

3. —— *Inspection — Right to take Copies — Solicitor's Lien.*] A party who has the right to the production and inspection of documents may take copies of such documents.—*Lockett* v. *Carey* (10 Jur. N. S. 144) not followed on this point. PRATT *v.* PRATT - - **51 L. J. Ch. 838; [47 L. T. 249; 30 W. R. 837**

4. —— *Place of Production—Judge's Discretion.*] A Judge of first instance in ordering the production of documents at a particular place exercises a discretion with which the Court of Appeal will not interfere. BUSTROS *v.* BUSTROS **[30 W. R. 374 (C.A.)**

—— Title-deeds deposited by mortgagee—Production of.

See BANKRUPTCY—PROOF. 1.

IX. PRACTICE — DISCOVERY — INTERROGATORIES—*Action by Administrator for Recovery of Land—Discovery as to Defendant's Title.*] In an action by an administratrix for recovery of lands which were formerly in the possession of the deceased, the Defendant was not compelled to answer interrogatories as to the circumstances under which he went into possession, the instrument (if any) under which he held, and the character of his possession.

If, in an action for recovery of land, it is alleged that there are peculiar circumstances entitling the Plaintiff to administer such interrogatories as the above, there should be an affidavit setting out the facts relied on. BLEAZBY *v.* BLEAZBY **[10 L. R. Ir. 60.**

X. PRACTICE—DIVORCE—*Petition for Alimony* pend. lite—*Order for Payment of Costs by Respondent, and Security for future Costs.*] Form of order for taxation and payment by the Respondent of costs already incurred in a pending suit for divorce *à mensa et thoro,* and that the Petitioner's future costs be referred for taxation *de die in diem,* and that the taxing master do ascertain and report what is a sufficient sum to be paid into Court by the Respondent, or what is a sufficient security to cover the costs of the Petitioner incidental to the trial. M'DOWELL *v.* M'DOWELL **[9 L. R. Ir. 347**

2. —— *Separation — Deed of — Allowance to Wife—Subsequent Adultery of Husband—Order for Maintenance to Wife.*] A married woman, by a deed of separation from her husband, had agreed to accept certain sums for her support, and had covenanted not to sue her husband at any time thereafter for future maintenance. On discovering subsequently that her husband had been guilty of incestuous adultery, she had obtained a decree *nisi* for the dissolution of the marriage:—*Held,* that she was entitled to the usual order for permanent maintenance, notwithstanding her covenant in the deed. MORRALL *v.* MORRALL - - - - **47 L. T. 50**

XI. PRACTICE — JOINDER — *Action for quiet Possession—Injunction—O. XVII. r.* 2.] An action having been brought by a purchaser of real property, claiming quiet possession of the same, and an injunction to restrain the defendant from interfering with such possession:—*Held,* that the claim for an injunction could be joined with that for possession without leave of the Court, not being a separate cause of action. KENDRICK *v.* ROBERTS - - **46 L. T. 59; 30 W. R. 365.**

XII. PRACTICE—MOTION FOR JUDGMENT—*Admissions of Fact in Pleadings—Production of Deeds—Proof of Contents—O. XL. r.* 11.] In an action for foreclosure the statement of claim set out the purport and effect of several mortgage deeds, and alleged their due execution. The statement of defence craved leave to refer to the deeds when produced, and, save as by such deeds when produced should appear, did not admit that the same were of or to the purport or effect in the statement of claim mentioned. Upon motion for judgment on admissions in the pleadings, the deeds being produced in Court:—*Held,* that there was a sufficient admission of the execution of the deeds, and that, as it appeared on their production that they were of the dates, and made

XII. PRACTICE—MOTION FOR JUDGMENT—*continued.*

between the parties mentioned in the statement of claim, the Plaintiffs were entitled to judgment. BARNARD *v.* WIELAND - - **30 W. R. 947**

2. —— *Conditional Leave to defend, so as to give Opportunity of cross-examining Deponent—O. XIV.*] A form of application for shares in the Plaintiff Co., stating (*inter alia*) that one shilling per share was payable on application, was filled up by the Defendant at the request of one B., who was not an agent of the Co., but who asked the Defendant to do so in order to enable the directors to go to allotment, telling him at the same time that if the application was made use of he would be held harmless. The amount payable upon application was paid into the Co.'s bank, but not by the Defendant. An action was brought by the Co. for unpaid calls, and a clerk of the Co. made an affidavit stating that a letter of allotment was duly posted to the Defendant. The Defendant swore that the letter was never received. The Co. applying to sign judgment under O. XIV., unconditional leave to defend was given to the Defendant by a Divisional Court:—*Held*, on appeal, that if the letter of allotment was posted there was no defence; but, as the Defendant wished to cross-examine the clerk who swore to the posting of the letter, leave to defend was given to the Defendant on payment by him into Court of the amount sued for.—*Household Fire, &c., Insurance Co.* v. *Grant* (4 Ex. D. 216) followed. CARTA PARA GOLD MINING Co. *v.* FASTNEDGE - - **30 W. R. 880 (C.A.)**

3. —— *Default of Pleading—General Orders XIII.; XX. r. 2; XXI. r. 3; XXVIII. r. 2 (Ireland).*] A Defendant having entered an appearance requiring a statement of claim, the Plaintiff moved in vacation for final judgment, and the Judge made "no rule" on the motion, no special time being limited for the delivery of the defence:—*Held*, that after the lapse of eight days from the end of the vacation the Plaintiff might sign judgment by default without delivering a statement of claim, or notice in lieu thereof. RAE *v.* LANGFORD - - - - **10 L. R. Ir. 108**

4. —— *Infant Defendant—Notice of Trial—Rules of Court*, 1875, *O. XIX. r.* 17; *O. XXIX. rr.* 10 *&* 11; *O. XXXVI. r.* 3.] In an action against several Defendants, one of whom was an infant, no defences had been put in. The Court ordered that the action should be set down on notice of trial as against the infant Defendant, and on notice of motion for judgment as against the other Defendants. NATIONAL PROVINCIAL BANK *v.* EVANS - **51 L. J. Ch. 97; 30 W. R. 177**

5. —— *Specially indorsed Writ—Foreclosure Action—Covenant to pay in Mortgage Deed—O. III. r.* 6—*O. XIV. rr.* 1 *a*, 4.] Where in an action for foreclosure the writ was in addition specially indorsed, under O. III. r. 6, with a claim for the amount due on the covenant to pay in the mortgage deed, an application to enter judgment, under O. XIV. r. 1 a., against the mortgagor for the amount so claimed before trial of the action was refused with costs. HILL *v.* SIDEBOTTOM **[47 L. T. 224**

XIII. PRACTICE — MOTION TO SET ASIDE JUDGMENT—*Married Woman, Action against—Judgment by Default—Setting aside Judgment—Delay.*] An action having been begun against a husband and wife, on a joint and several promissory note signed by them both, judgment was, in 1880, signed against them both for default of appearance. Certain summonses and orders were afterwards served on the wife, who handed to her husband all such documents until November, 1881, until when it was shewn by her affidavit that she was ignorant of the nature of the proceedings. In November, 1881, her husband filed a petition for liquidation, and in February, 1882, a summons for committal was served upon the wife. The summons was opposed by her, but an order was made, whereupon she moved to set aside the original judgment:—*Held*, that, notwithstanding the delay, the judgment must be set aside, being, as it was, a personal judgment against a married woman, and the Plaintiff not having been either prejudiced or misled. Order of Grove and Lopes, JJ. reversed.—*Atwood* v. *Chichester* (3 Q. B. D. 722) followed. DAVIS *v.* BALLENDEN - - - - **46 L. T. 797 (C.A.)**

XIV. PRACTICE — NEW TRIAL—*Grounds for granting — Costs of previous Trial.*] In cases where the verdict of a jury depends on a scientific question which is not fully solved, but still within the region of *bonâ fide* controversy, the usual rule is that a verdict on a question of fact ought not to be disturbed, unless the preponderance of evidence against the verdict be strong and clear. In deciding whether or not a new trial should be granted, the importance of the verdict to others than the parties to the litigation, and also the novelty of the question at issue, are elements to be taken into account. Where a new trial is granted on the ground of the unsatisfactory nature of the verdict, a condition that the party who applies for the new trial should pay the costs of the previous trial should not be imposed. METROPOLITAN ASYLUM DISTRICT (MANAGERS OF) *v.* HILL (Appeal No. 1) - - - **47 L. T. 29 (H. L.)**

—— Action remitted to County Court for trial.
See PRACTICE—APPEAL. 1.

—— Immaterial questions submitted to jury.
See WAY. 2.

—— Interpleader issue.
See INTERPLEADER. 2.

XV. PRACTICE—PARTIES—*Alteration of—Proposed new Party resident outside Jurisdiction—Ex parte Application—O. L. r.* 4.] Upon an *ex parte* application under the above rule the Court may, in the case of the death of an accounting party in the action, make an order that the action be continued between the continuing parties and the executor of the deceased; notwithstanding that such executor resides in, and has taken out probate in, Ireland. The Court requires, in such a case, an affidavit shewing the circumstances under which the order is applied for. JAMESON *v.* MARSHALL - - - - - **46 L. T. 480**

2. —— *Amendment—Adding Parties as co-Defendants—Action of Tort.*] An action was brought against an Irish Railway Co. for damages for breach of contract in not carrying the Plaintiff's pigs from Ireland to Liverpool, for trover

XV. PRACTICE—PARTIES—*continued.*

and conversion of the pigs, and for money had and received to the use of the Plaintiff. In answer to interrogatories, the Defendant Co. stated that some of the pigs were sold by the L. Co., on whose line part of the journey had to be performed, but that such sale was effected without any communication to or from the Defendant Co. in reference thereto. Leave was given to the Plaintiff to add the L. Co. as co-Defendants. CREATON *v.* MIDLAND GREAT WESTERN RAILWAY Co. - - - - - - - **10 L. R. Ir. 74**

3. —— *Consolidated Actions — Conduct of Action.*] Separate actions having been commenced by A. and B. against X., the actions were consolidated, and A. and B. made co-Plaintiffs. They afterwards disagreed as to the course to be pursued in the action, and A. obtained an order to change his solicitor:—*Held*, that B. must have the conduct of the action, and A. be made a co-Defendant with X. for, although B.'s claim was the smaller, A had taken the first steps towards severance by changing solicitors. HOLDEN *v.* SILKSTONE & DODSWORTH COAL AND IRON CO. **[45 L. T. 531; 30 W. R. 98**

4. —— *Creditor, who has obtained Garnishee Order against Plaintiff, added as co-Plaintiff—O. L. r. 2, O. XLV.*] The Plaintiff in an action in the Chancery Division was sued in the Queen's Bench Division by a bank for £3200. In the Chancery action the Plaintiff obtained judgment for £5000 as liquidated damages, whereupon the bank proceeded to judgment in the other action, and had a garnishee order made absolute in their favour, attaching all debts due to the Defendant (the Plaintiff in the Chancery action) from the Defendant in the Chancery action. They then took out a summons in the Chancery action, asking that they might be made Plaintiffs in the same:—*Held*, that they were entitled to be added as co-Plaintiffs, and to have notice of all proceedings taken by the original Plaintiff to recover the sum found due to him, until their debt of £3200 should be discharged, but that they could not have the conduct of the action. WALLIS *v.* SMITH **[51 L. J. Ch. 577; 46 L. T. 473**

5. —— *Infant—Death of next Friend of Infant Plaintiff—G. O. LIII. r.* 11 (*Ireland*).] Upon the death, pending action, of an infant Plaintiff's next friend, a new next friend may be appointed on an *ex parte* motion in Court. DALY *v.* DALY - - - - - - **9 L. R. Ir. 383**

—— Administration action—Transfer of debenture stock.
See VOLUNTARY CONVEYANCE. 2.

—— Co-Plaintiffs having antagonistic cases.
See TITHE RENT-CHARGE.

—— Corporation—Action against—Joinder of individual members.
See PRACTICE—COSTS. 4.

—— Solicitor co-Defendant—Observations on making solicitors parties.
See VENDOR AND PURCHASER. 4.

XVI. PRACTICE—PARTITION—*Parties out of Jurisdiction—Service and Advertisements dispensed with—Partition Act*, 1876 (39 & 40 *Vict. c.* 17), *s.* 3.] The Court cannot, in a partition action, dispense with the advertisements directed

XVI. PRACTICE—PARTITION—*continued.*

by the above section, *as well as* with service on parties out of the jurisdiction. HACKING *v.* WHALLEY - - - - - - **51 L. J. Ch. 944**

XVII. PRACTICE—PAYMENT OUT OF COURT—*Infant—Testamentary Guardian—Legacy Duty Act* (36 *Geo.* 3, *c.* 52), *s.* 32.] A testamentary guardian is not, as such, a "person entitled to" obtain payment out of Court of funds belonging to his infant ward, and paid into Court under the above Act. *Semble*, a testamentary guardian is, in ordinary cases, not depending on a special Act, entitled to give a receipt for funds coming to his infant ward. *Re* CRESSWELL **[45 L. T. 468; 30 W. R. 244**

—— Costs of motions—Compulsory purchase.
See PRACTICE—COSTS. 6.

—— Deposit—Petition for return of—Service of.
See LANDS CLAUSES ACT. 5.

—— Purchase-money—"Persons absolutely entitled."
See LANDS CLAUSES ACT. 6.

XVIII. PRACTICE—PLEADING—*Claim, Statement of—Non-delivery of—Order dismissing Action—Effect of non-service of—O. XXIX. r.* 1—*O. LVII. r.* 6.] An order was made on the 2nd November dismissing an action unless a statement of claim was delivered within seven days, and on the 9th November this period was extended for three days. The Plaintiff delivered his statement of claim on the 14th November, and on the 15th the Defendant drew up and served the order of the 2nd November. The master, on the 17th November, and a Judge subsequently, ordered that the statement of claim should stand:—*Held*, that the time for appealing from the order of the 2nd November should be extended.

Per Bowen, J., *primâ facie*, an order speaks from the time it is drawn up, so that in this case the action remained alive when the statement of claim was delivered. METCALFE *v.* BRITISH TEA ASSOCIATION - - - - - - **46 L. T. 31**

2. —— *Defence, Statement of—Default in Appearance—Partnership—O. XII. r.* 12.] Default having been made in appearance by one of the two members of a defendant firm, the other put in a statement of defence in the firm's name. Motion to take it off the file refused. TAYLOR *v.* COLLIER - - **51 L. J. Ch. 853; 30 W. R. 701**

3. —— *Defence, Statement of—Libel—General Denial of—O. XIX. rr.* 17, 18, 19.] The Defendant in an action for libel may not in his statement of defence deny generally that "the Defendant wrote or published the same maliciously, as alleged," but must set out the facts upon which he relies to shew either privilege or justification. BELT *v.* LAWES - - - - - - **15 L. J. Q. B. 359**

4. —— *Demurrer*—Donatio Mortis Causâ—*O. XIX. r.* 4.] A statement of claim contained an allegation that an intestate "two days before his death made a good and valid *donatio mortis causâ* to the Plaintiff of the whole of his moneys standing on deposit at the E. Savings Bank," but stated no facts amounting to a *donatio mortis causâ*:—*Held*, on demurrer, that the facts alleged in the statement of claim did not shew a valid *donatio mortis causâ*, and demurrer allowed. TOWNSEND *v.* PARTON - - **45 L. T. 755; 30 W. R. 287**

XVIII. PRACTICE—PLEADING—*continued.*

5. —— *Demurrer—Foreign Judgment—Action on—Defence that Foreign Judgment obtained by Fraud.*] The Defendants, in an action brought on a foreign judgment, pleaded that the Plaintiff had obtained such judgment by a fraudulent misrepresentation to the foreign Court:—*Held*, affirming the decision of Mathew and Cave, JJ. (30 W. R. 429), upon demurrer, that this plea afforded a good defence. ABOULOFF *v.* OPPENHEIMER - - **52 L. J. Q. B. 1; 47 L. T. 325; [31 W. R. 57 (C.A.)**

6. —— *Embarrassing Defence—Action for Recovery of Land—O. XVIII. rr.* 11, 14 (*Ireland*).] In an action to recover land for non-payment of rent, the Defendant denied (1) that he became, or was, or is, tenant to the Plaintiffs or any of them; and (2) that he paid rent to the Plaintiffs, or any of them:—*Held*, embarrassing and defective, in not denying that there was a subsisting tenancy in any person under the Plaintiffs. *Semble*, an allegation in the claim that the Defendant paid rent is embarrassing, as either wholly immaterial or merely evidence; but if payment of rent be alleged, the allegation may be traversed in the defence. ROWLEY *v.* LAFFAN - - **10 L. R. Ir. 9**

7. —— *Embarrassing Reply—Trespass—Justification — Excess — New Assignment.*] In an action for trespass to Plaintiff's house, and conversion of his goods, the claim alleged that the Defendants put bailiffs into the house, stayed there a long time, and on two different days brought in a concourse of people. The defence justified these acts as done in executing a *fi fa.* The Plaintiff replied, that in continuing in the house a long time, posting auction bills, and introducing a concourse of people, as in the claim mentioned, the Defendants stayed more than a reasonable time, and brought in more people and made a greater noise and disturbance upon the Plaintiff's premises than was reasonable in order to levy under the *fi. fa.*:—*Held*, that the reply was either a new assignment, and therefore inadmissible under G. O. (Ireland) XVIII., r. 7, or was embarrassing; and that in either view it should be set aside, with leave to amend the statement of claim. BYRNE *v.* DUCKETT - **10 L. R. Ir. 24**

—— Amendment—Slip.
See ESTOPPEL.

—— Guarantee for rent—Concealment of material facts.
See PRINCIPAL AND SURETY. 2.

—— Guarantee—Fraud.
See GUARANTEE.

XIX. PRACTICE — RECEIVER — *Leaseholds — Action to recover Possession of—Disputed Title—Judicature Act*, 1873, *s.* 25.] Under the above sect. the Court can, in cases where the title to the property is disputed, appoint a receiver.—*Carrow* v. *Ferrior*; *Dunn* v. *Ferrior* (L. R. 3 Ch. 719); *Talbot* v. *Hope Scott* (4 K. & J. 96; 27 L. J. Ch. 273); have been overruled by the above section. BERRY *v.* KEEN - - **51 L. J. Ch. 912 (C.A.)**

2. —— *Motion for—Dissolution of Partnership not claimed.*] The writ in an action by one partner against another claimed an injunction to restrain the Defendant from drawing out of the partnership funds more than the amount stipulated in the articles by way of subsistence money; a receiver, and an account. Dissolution of the partnership was not claimed:—*Held*, on an interim motion for a receiver, that, although dissolution was not claimed, the Court could appoint a receiver, not being also a manager, of the partnership business. MEDWIN *v.* DITCHAM **[47 L. T. 250**

XIX. PRACTICE—RECEIVER—*continued.*

—— Bankruptcy,
See BANKRUPCY—RECEIVER.

—— Costs—Summons.
See COMPANY—WINDING-UP. 10.

XX. PRACTICE—REFEREE—*Official—Accounts—Form of Report—Judicature Act*, 1873, *s.* 56.] At the trial of an action, an order was made that an account of all dealings between the Plaintiff and the Defendant should be taken before the official referee, and further consideration was adjourned. The official referee reported that on the account he had taken the Defendant was indebted to the Plaintiff in £2457, but the report did not set out the items of the account. On a motion by the Defendant that the report might be remitted to the referee to supply the items:—*Held*, that the reference being for inquiry and report for the assistance of the Court, and not final, the report must be remitted to the referee, that he might set out what items he had allowed and disallowed. BURRARD *v.* CALISHER (No. 1) **[51 L. J. Ch. 223; 45 L. T. 793; 30 W. R. 321**

2.——*Report — Summons to confirm — Judicature Act*, 1873, *s.* 56.] An order was made on the trial of an action that certain accounts should be taken by the official referee, and that the rest of the trial should stand over until the official referee's report should have been made. The report having been made and filed:—*Held*, that a "summons to confirm" the report, before the action was restored to the paper for hearing, was unnecessary. DEACON *v.* DOLBY **51 L. J. Ch. 248; [30 W. R. 317**

XXI. PRACTICE — SERVICE — *Default of Appearance—Notice to assess Damages before the Master — Filing in Office — O. XVIII. r.* 21; *O. XXIX. r.* 4 (*Ireland*).] In default of appearance in an action for unliquidated damages, after judgment marked by the Plaintiff, the notice of the inquiry before the Master of the Court to assess damages may be served by filing it with the proper officer. O'CONNOR *v.* HOGAN **[10 L. R. Ir. 262**

XXII. PRACTICE—STAYING PROCEEDINGS—*Pending Appeal to House of Lords—Appeal as to Amount of Damages only.*] The Court of Appeal will not grant an application to stay execution to allow a party dissatisfied with the amount of damages assessed by a jury an opportunity to decide whether he will appeal to the House of Lords or not. WEBBER *v.* LONDON, BRIGHTON AND SOUTH COAST RAILWAY CO. **[51 L. J. Q. B. 154 (C. A.)**

XXIII. PRACTICE — TRIAL — *Notice of—Dismissal for want of Prosecution—Postponement of Trial on Plaintiff's Application—G. O. XXXV. rr.* 2, 4 (*Ireland*).] An abortive notice of trial does not preclude the dismissal of the action under the above rules. Where the time mentioned in the above rule 2 had elapsed, the Court dismissed the action

XXIII. PRACTICE—TRIAL—*continued.*

for want of prosecution, though notice of trial had been served, the trial having been postponed on the Plaintiffs' application, and no further proceedings having been taken by them to bring the case to trial. HIBERNIAN BANK *v.* HUGHES [10 L. R. Ir. 15.

2. —— *Notice of—Time for delivering—Enlargement of—Dismissal of Action for want of Compliance with Order—O. LVII. r. 6—O. XXXVII. r. 4 a.*] A Master made an order that an action should be dismissed unless notice of trial were delivered by a certain day. On account of a mistake of the solicitor's clerk, notice of trial was not delivered within the required time. A Judge at chambers having, in the exercise of his discretion, refused to extend the time fixed by the Master, the Court, on appeal, refused to interfere with the Judge's discretion. GILDER *v.* MORRISON [30 W. R. 815

3. —— Trial of issue without jury—Acquiescence of Defendants in jurisdiction of Judge to determine questions of fact—Judicature (Ir.) Act, s. 42—G. O. (Ir.) XXXV. r. 2. HAMILTON *v.* ATT.-GEN. - - 9 L. R. Ir. 271 (C.A.)

XXIV. PRACTICE—WRIT—*Indorsement of Service.*] The Court will not extend the time within which the indorsement of the date of service of a writ of summons may be made by the process-server. FREEN *v.* DUNNE - 10 L. R. Ir. 204

—— Service out of jurisdiction—Contract between Irish shipowner and English underwriter.
See INSURANCE—MARINE. 3.

—— Specially indorsed—Foreclosure action.
See PRACTICE—MOTION FOR JUDGMENT. 5.

PRACTICE—Administration—Form of judgment.
See EXECUTOR—ACTIONS. 2, 3.

—— Amendment—Name of Co.—Winding-up.
See COMPANY—WINDING-UP. 15.

—— Amendment of order which has been passed and entered.
See SETTLED ESTATES ACT. 2.

—— Application for leave to bind interest of married woman.
See HUSBAND AND WIFE—WIFE'S PROPERTY. 3.

—— Changing solicitor—Order.
See SOLICITOR. 6.

—— County Court—Signing judgment.
See COUNTY COURT. 2.

—— Criminal law.
See CRIMINAL LAW. 12, 13, 19, 20.

—— Discharge of winding-up order by Court of first instance.
See COMPANY—WINDING-UP. 16.

—— Ecclesiastical Courts.
See ECCLESIASTICAL LAW.

—— Evidence.
See EVIDENCE.

—— Foreclosure action—Infant Defendant.
See MORTGAGE. 5.

—— Interpleader issue—Application for new trial of.
See INTERPLEADER. 2.

PRACTICE—*continued.*

—— Interpleader—Joinder of trustee in bankruptcy.
See INTERPLEADER. 1.

—— Lands Clauses Act.
See LANDS CLAUSES ACT.

—— Lunacy.
See LUNATIC.

—— Lunacy—Order in action, for sale of realty.
See VENDOR AND PURCHASER. 3.

—— Notice of action against constable—Mistake as to date.
See NOTICE OF ACTION.

—— Particulars in action for damage to cargo.
See SHIP. 11.

—— Sale by order of Court—Free from incumbrance.
See CONVEYANCING ACT. 1, 2.

—— Separate estate—Claim for inquiry.
See HUSBAND AND WIFE—WIFE'S PROPERTY. 7.

—— Settled Estates Act.
See SETTLED ESTATES ACT.

—— Shorthand notes—Costs of.
See LEASE.

—— Solicitor—Application by, claiming lien.
See SOLICITOR. 10.

PRECATORY TRUST—Will.
See WILL—CONSTRUCTION. 29.

PREFERENTIAL DEBT — Friendly society — Bankruptcy of treasurer of.
See FRIENDLY SOCIETY. 1.

PREMIUM—Insurance.
See INSURANCE.

—— Return of, on dissolution of partnership.
See PARTNERSHIP. 2.

PRESCRIPTION.
See EASEMENT.

PRINCIPAL AND AGENT—Agent to sell goods on credit has implied authority to receive payment therefor—Purchaser not chargeable because of words "payable at office" on bill. PUTNAM *v.* FRENCH - - - 38 Amer. R. 682 (U.S.)

2. —— *Auctioneer—Warranty.*] An auctioneer to whom goods have been entrusted to be sold by public auction has not an implied authority from the vendor to warrant them. PAYNE *v.* LECONFIELD 51 L. J. Q. B. 642; 30 W. R. 814

3. —— Authority of agent to sign note for principal—Note signed by sub-agent—Principal *held* bound. WEAVER *v.* CARNALL [37 Amer. R. 22 (U.S.)

4. —— Broker—Revocation of agency—Right to compensation after—Sales partially brought about before agency terminated. SIBBALD *v.* BETHLEHEM IRON CO. 38 Amer. R. 441 (U.S.)

5. —— Deposit of note by agent in bank, for collection—Appropriation by bank to agent's debt—Action by principal against bank, *held* not maintainable. WOOD *v.* BOYLSTON NATIONAL BANK - - - 37 Amer. R. 366 (U.S.)

6. —— Disclosure of principal. — Where an agent signs papers, an express disclosure on their face of his principal's name is not essential to

PRINCIPAL AND AGENT—*continued.*

protect him from personal liability to a person having knowledge of the facts. METCALF *v.* WILLIAMS - - - **14 Otto, 93 (U.S.)**

7. —— *Factors Acts* (4 *Geo.* 4, *c.* 83; 6 *Geo.* 4, *c.* 94; 5 *& 6 Vict. c.* 39)—*Advance by Brokers to Agent on security of Bills of Lading of Goods consigned to him for sale—Antecedent Debt.*] Goods were consigned by merchants to an agent, since dead, who pledged the bills of lading to his own brokers, to whom he was largely indebted on his private account. In the transactions, consisting of purchases and sales, between the brokers and the agent, the former were liable to their own undisclosed principals in case of default by the agent. Some of the goods had not been sold when the writ was issued:—*Held*, in an action by the merchants against the brokers for the goods or an account, that the contingent liability of the brokers did not constitute an antecedent debt, and that the advances were *bonâ fide*, and protected by the Factors Acts.—*Macnee* v. *Gorst* (L. R. 4 Eq. 315) distinguished. KALTENBACH *v.* LEWIS **[45 L. T. 666; 30 W. R. 356**

PRINCIPAL AND SURETY—Death of co-surety—His estate *held* liable to contribute. JOHNSON *v.* HARVEY - - **38 Amer. R. 515 (U.S.)**

2. —— *Pleading—Guarantee for Rent—Concealment—Non-communication of Material Facts.*] In consideration of the Plaintiff accepting H. as tenant, the Defendant guaranteed payment of the rent by H. In an action upon the guarantee, the Defendant pleaded that, prior to the making of the guarantee, H. had been tenant to the Plaintiff and had been guilty of gross irregularity and delay in paying his rent, and at the date of the guarantee owed a large sum to the Plaintiff for arrears, of which the Defendant was ignorant; that the Plaintiff did not, prior to the guarantee, communicate to the Defendant, but concealed from him these material facts, which, if communicated to him, would have prevented him from executing the guarantee:—*Held*, upon demurrer, a bad plea. ROPER *v.* COX - **10 L. R. Ir. 200**

3. —— Surety executing instrument apparently as principal:—*Held*, bound as principal unless creditor knew true character of obligation. GOODMAN *v.* LITAKER - **37 Amer. R. 602 (U.S.)**

—— Administration bond—Guarantee society.
See ADMINISTRATOR. 1.

—— Joint note—Name of one maker forged.
See BILL OF EXCHANGE. 12.

PRIORITY—Administration—Costs.
See ADMINISTRATOR. 2.

—— Liens on ship—Wages of seamen.
See SHIP. 14.

—— Members of Co.—Rights of, in winding-up.
See COMPANY—WINDING-UP. 14.

—— Mortgages.
See MORTGAGE. 3, 8.

PRIVILEGE—Slander—Malice—Probable cause.
See DEFAMATION. 2.

—— Solicitor and client.
See EVIDENCE. 8.

—— Witness—Service of process.
See CONTEMPT OF COURT. 2.

PRIVY COUNCIL—Appeal to—Calcutta High Court in Admiralty.
See PRACTICE—APPEAL. 4.

PROBATE.
See WILL—PROBATE.

PRODUCTION OF DOCUMENTS.
See PRACTICE—DISCOVERY—DOCUMENTS.

PROJECTION—Exposing goods in front of shop—Claim of right.
See LOCAL GOVERNMENT.

PROMISE OF MARRIAGE—By married man.
See FRAUD. 1.

PROMISSORY NOTE.
See BILL OF EXCHANGE.

PROOF—Bankruptcy.
See BANKRUPTCY—PROOF.

PROSPECTUS—Misrepresentation—Consideration for becoming director.
See COMPANY—DIRECTOR. 2.

PROTECTED DEALING WITH BANKRUPT.
See BANKRUPTCY — PROTECTED TRANSACTION.

PUBLIC HEALTH ACTS—*New Street—Width of—Space left for—Bye-laws.*] The Appellant, who was the owner of land in the area of a local board, proposed to build six houses thereon, and sent a notice and plan shewing what he purposed doing, and where the new street of 10 yards' width was to be. The board having sanctioned the erection of the houses, they were built accordingly. Some years afterwards the Appellant was summoned for disobedience to the bye-law in not leaving a space of 30 feet in width for the street. The fact was that his land extended only 9 feet in front of the houses, but it was not till afterwards that the board was aware of this. The Appellant having been convicted:—*Held*, that the local board should have satisfied themselves, before sanctioning the plans, that the Appellant had land of sufficient width to make the proposed new street when the erection of the houses should be finished, and that the conviction was therefore wrong. THOMPSON *v.* FAILSWORTH LOCAL BOARD **[46 J. P. 21**

2. —— *Paving, Expenses of—"Charge on the premises"—Public Health Act*, 1875 (38 *& 39 Vict. c.* 55), *ss.* 4, 150, 257.] The expenses incurred by a local authority for paving, &c., remain, until recovered, a "charge on the premises" within sect. 257 of the above Act, and may be enforced against the person who is owner of the premises for the time being, although he was not the owner at the time when the works were completed, and although the local authority has, by negligence, lost their summary remedy (under sect. 150) against the former owner. SUNDERLAND (MAYOR, &c., OF) *v.* ALCOCK **51 L. J. Ch. 546; 46 L. T. 377; [30 W. R. 655**

3. —— *Rates, Highway and General District—Sewerage—Public Works of*—38 *& 39 Vict. c.* 55, *s.* 216, *sub-s.* 3.] At the date of the formation of the B. Urban Sanitary District, and at the time when the local board began to take charge of the repair of highways, there were in the B. district some old-fashioned stone drains or culverts into which some houses sent their sewage, and into which storm water entered through gratings, but

PUBLIC HEALTH ACTS—*continued.*

the board had not added to these nor made any new works themselves. The board having made a highway rate and assessed occupiers thereto:—*Held*, that the expenses of highway repairs ought to have been levied by a general district, and not a highway, rate; for the existing drains sufficiently answered the description of public works within the above sub-section. REG. *v.* BELPER LOCAL BOARD - - - **46 J. P. 166**

—— Corporation—Contract by—Seal.
See CORPORATION

PUBLIC HOUSE.
See INN; INNKEEPER.

Q.

QUALIFICATION—Director.
See COMPANY—WINDING-UP. 5, 6.

—— Solicitor.
See SOLICITOR. 11, 12.

R.

RAILWAY—Negligence—Not bound to station flagman at level crossing, unless it is the custom so to do. WELSCH *v.* HANNIBAL &C. RAILROAD CO. - - - - **37 Amer. R. 440**

2. —— *Running Powers — Agreement constituted by Statute—Remedy against an insolvent Co. unable to pay Arrears of Rent—Interdict against use of Line.*] An Act of Parliament gave a Railway Co. running powers over certain portions of the line of another Co., the consideration being half-yearly payments of rent therefor. The powers were exercised, but the rent was not paid, and fell largely into arrear, the Co. becoming hopelessly insolvent. The only guarantee offered to the second Co. for the future was an undertaking by a third Co. to work the line and meet the payments of rent to fall due, nothing being said about arrears.

In an action by the creditor Co. against its debtor, the Court granted a decree (1) for payment of past rent, and (2) failing payment, of interdict against "the Defendants, or anyone claiming right under them, from using" the line in question; and (3) a declaration that the Plaintiffs were entitled "to the sole and exclusive possession, use, and enjoyment" of the subjects in question. PORTPATRICK RAILWAY CO. *v.* GIRVAN AND PORTPATRICK JUNCTION RAILWAY CO.
[9 C. of S. Cas. 510 (Sc.)

—— *See also*
CARRIER—GOODS.
CARRIER—PASSENGERS.

—— Compulsory purchase by—Compensation.
See LANDS CLAUSES ACT. 2.

—— Compulsory purchase — Payment out of Court of purchase-money—Costs of motion.
See PRACTICE—COSTS. 6.

—— Debenture stock—Power to invest in—Guaranteed stock.
See WILL—INVESTMENT CLAUSE.

RAILWAY—*continued.*

—— Embankment — Passage of flood water through.
See WATER AND WATERCOURSES. 6.

—— Hire of carriages—Connecting railways.
See BAILMENT.

—— Negligence—Jumping off train to avoid collision.
See NEGLIGENCE. 2.

—— Negligence—Sparks from locomotive.
See NEGLIGENCE. 3.

—— Undertaking to erect siding—Specific performance—Damages.
See SPECIFIC PERFORMANCE. 2.

RAPE—Evidence—Complaint—Particulars of.
See CRIMINAL LAW. 8.

RATES—Highway and general district—Public works of sewerage.
See PUBLIC HEALTH ACTS. 3.

—— Poor.
See POOR-RATE.

RECEIVER.
See PRACTICE—RECEIVER.

—— Bankruptcy.
See BANKRUPTCY—RECEIVER.

—— Partnership action—Solicitors—Deposit of deeds.
See PARTNERSHIP. 1.

—— Partnership—Appointment—Surviving partner.
See PARTNERSHIP. 6.

RECITALS—Codicil—Inaccurate recital of will.
See WILL—CONSTRUCTION. 19.

—— Mortgage to secure arrears of interest.
See HUSBAND AND WIFE—WIFE'S PROPERTY. 1.

—— Will—Description of property.
See WILL—CONSTRUCTION. 25.

RECTIFICATION—Deed-poll—Insertion of hotch-pot clause.
See POWER OF APPOINTMENT. 2.

REFEREE.
See PRACTICE—REFEREE.

REFERENCE TO ARBITRATION.
See Cases under ARBITRATION.

REGISTRAR—Bankruptcy.
See BANKRUPTCY—REGISTRAR.

—— County Court—Certificate.
See COUNTY COURT. 2.

REGISTRATION—Bill of sale—Affidavit of execution.
See BILL OF SALE. 4.

—— Company.
See COMPANY—REGISTRATION.

—— Licence to reproduce picture.
See COPYRIGHT,

—— Resolution for liquidation.
See BANKRUPTCY—LIQUIDATION; BANKRUPTCY—PETITION.

—— Trade-mark—Old marks—Similarity.
See TRADE-MARK. 4.

RELEASE—Of debtor—Composition deed—Estoppel.
See DEED. 2.

RELEASE—*continued.*

—— Power of appointment—Indirect benefit to appointor.
See POWER OF APPOINTMENT. 1.

—— Setting aside—Parental control.
See TRUSTEE. 7.

REMEMBRANCER OF CITY OF LONDON — Tenure of office.
See CUSTOM.

REMOVAL OF PAUPER.
See POOR LAW.

RENT—Arrears of—Railway—Injunction.
See RAILWAY. 2.

—— Liability for, after destruction of premises by fire.
See LANDLORD AND TENANT. 5.

RENT-CHARGE—County franchise.
See PARLIAMENT. 2.

—— Tithe — Union of benefices—Recovery of tithes.
See TITHE RENT-CHARGE.

REPLY—Embarrassing—Action for trespass.
See PRACTICE—PLEADING. 7.

REPORT—Official referee's.
See PRACTICE—REFEREE.

REPUGNANCY—Condition against alienation.
See DEED. 3.

REQUISITION—By purchaser — Performance of covenant to repair.
See VENDOR AND PURCHASER. 1.

RESERVATION—Implied—Easement of necessity —Adjacent support.
See SUPPORT.

RESIDUARY GIFT—Direction to carry on trade —Surplus profits.
See WILL—CONSTRUCTION. 26.

RESIDUE—Gift of, of insurance policy—Bonus added after testator's death.
See WILL—CONSTRUCTION. 25.

—— Undisposed of — Executor taking beneficially.
See WILL—CONSTRUCTION. 2.

RESOLUTION—For liquidation—*Mala fides*—Registration.
See BANKRUPTCY—PETITION.

—— For liquidation—*Ultrà vires*—Registration.
See BANKRUPTCY—LIQUIDATION.

RESTRAINT ON ANTICIPATION.
See HUSBAND AND WIFE—WIFE'S PROPERTY. 1—3.

RESULTING TRUST—Marriage portion—Failure of trusts of *corpus*.
See MARRIAGE SETTLEMENT.

REVENUE—*Income Tax—Assessment—"Profits"—Statutory Restrictions—Corporation.*] The Respondents were constituted by statute a corporation for the management of the Mersey Dock Estate. By the statute the surplus revenue of the board, which was derived from dock dues, &c., after payment of interest on moneys borrowed, was to be applied towards a sinking fund for the extinguishment of the principal moneys spent in the construction of the dock, and for no other

REVENUE—*continued.*

purpose:—*Held*, reversing the judgment of the Queen's Bench Division (50 L. J. Q. B. 449; 44 L. T. 645; 29 W. R. 606; 1881 Digest, col. 121), that the surplus moneys remaining after payment of the expenses of earning the same, and which under the statute were applicable only in a particular way in order to reduce the past debt, were available as "profits," and liable to income-tax. MERSEY DOCKS AND HARBOUR BOARD *v.* LUCAS
[51 L. J. Q. B. 114; 46 J. P. 388 (C.A.)

2. —— *Income Tax—Mines—Deduction from Assessment on account of Pits exhausted—5 & 6 Vict. c. 35, ss. 60 (Schedule A. No. 3), 100 (Schedule D), and 159—29 Vict. c. 36, s. 8.*] In an assessment for income-tax of the gross profits derived from mines no deduction can be made for a sum which is estimated to represent the capital employed in boring and in sinking pits which the year's working has exhausted.

Knowles v. *McAdam* (3 Ex. D. 23) disapproved.

As to whether in some cases deduction might not be allowed for the cost of sinking pits, *quære*. *Per* Earl Cairns: "I am not prepared to say that, under the words of 5 & 6 Vict. c. 35, a mine-owner might not in some cases be entitled to an allowance in respect of the cost of sinking a pit, by means of which pit the minerals are gotten which are the source of profit for the year in which the pit was sunk."

Per Lord Blackburn: "I do not wish to lay down any general proposition, either that money expended in sinking pits can never be in the nature of expenses incurred within the five years in working the coal so as to be properly taken into account in estimating the profits made in that period, or to say what, if any, the circumstances are under which it may be done." COLTNESS IRON Co. *v.* BLACK - - **51 L. J. Q. B. 626 (H.L.)**

3. —— *Inhabited House Duty.*] Separate tenements—Occupation "solely for the purposes of trade or business" — Structural division — 48 Geo. 3, c. 55, Sched. B, Rules 5 and 6—Customs and Inland Revenue Act, 1878 (41 Vict. c. 15), s. 13, sub-ss. 1 and 2. RUSSELL *v.* COUTTS
[9 C. of S. Cas. 261 (Sc.)

4. —— *Inhabited House Duty—"Caretaker"—"Servant or other person"—"Clerk" dwelling in House to protect it—Tenement occupied for Business only—41 Vict. c. 15, s. 13, sub-s. 2.*] The ground-floor and basement of a building, which had a separate entrance from the street, and no internal communication with the rest of the building, from which it was structurally separated, were occupied and used as a bank by the Appellants (the City Bank). Only two persons lodged during the night-time on the premises, and they were a porter and a clerk, both in the employ of the Appellants. The clerk was on the premises for their protection. There were also two watchmen who patrolled the premises at night, but they had no apartment there. The clerk had custody of the keys of the premises, and it was his duty to see that they were safely locked up every night, he occupying one small room only, and his residence being merely for protection of the premises: —*Held*, by Grove and Lopes, JJ., that the Appellants were not liable to inhabited house duty in respect of the premises in question, for the clerk

REVENUE—*continued.*

dwelt on the premises solely to protect them, although called a "clerk," and therefore the case fell within the exemption contained in the above sub-section.—*Yewens* v. *Noakes* (6 Q. B. D. 530) distinguished. CITY BANK *v.* LAST **47 L. T. 254**

5. —— *Inhabited House Duty—"Servant or other Person"—Clerk dwelling with Wife, Children, and Servant on Premises—Caretaker for Protection—41 Vict. c. 15, s. 13, sub-s. 2.*] The Appellant was the owner in fee of premises occupied and used by him as a bank. The premises comprised three coal-cellars and strong-room underground, a front and back sitting-room, with a kitchen and scullery on the ground-floor, a front sitting-room and two bedrooms on the first floor, and five bedrooms on the second floor. The Appellant used for the purposes of his bank one coal-cellar, the strong-room, and three rooms on the first floor. The kitchen, scullery, and three bedrooms, were occupied by S., who dwelt there, with his wife, a son and a daughter (both of age, and the former occupied in a County Court office), for the protection of the bank. The other rooms were unused. S. was a clerk of the Appellant at a salary of £100 a year, which included the services of himself and his family in taking down and putting up the bank shutters, cleaning the offices, &c.:—*Held*, by Grove and Lopes, JJ., that the Respondent was liable to be assessed to the inhabited house duty in respect of his occupation of the above-named premises, and did not come within the exemption in 41 Vict. c. 15, s. 13, sub-s. 2.—*Yewens* v. *Noakes* (6 Q. B. D. 530) followed. WOOTTEN *v.* ROLFE - **47 L. T. 252**

6. —— *Succession Duty Act*, 1853 (16 & 17 *Vict. c.* 51), *s.* 23.] Where lands yield no return other than from timber, trees, or wood, not being coppice or underwood, no succession duty is payable in respect thereof except under s. 23 of 16 & 17 Vict. c. 51. LORD ADVOCATE *v.* MARQUIS OF AILSA - - - **9 C. of S. Cas. 40 (Sc.)**

REVERSIONARY INTEREST — Mortgage of — Power of sale.
See MORTGAGE. 9.

REVOCATION — Agency — Broker — Compensation.
See PRINCIPAL AND AGENT. 4.

—— Appointment under power—Release.
See POWER OF APPOINTMENT. 1.

RIGHT OF WAY.
See WAY.

ROAD.
See WAY.

ROADWAY—*New Street—Paving and repairing Expenses—Undertaking to construct Roadway—Requirements of Highway Authority.*] The Plaintiff having brought an action to recover from the Defendant certain expenses paid to a highway authority for paving, &c., a new street prior to its being taken by the parish, it was proved that the Defendant had constructed the roadway and footpath in pursuance of an undertaking given by him to the Plaintiff, upon an assignment by him to the Plaintiff of his interest in premises adjoining the street:—*Held*, that the fact of the parish authority having paved, &c., the roadway and

ROADWAY—*continued.*

footpath, prior to taking it, was not evidence that the Defendant had not fulfilled his undertaking; and that the Defendant was not bound by his undertaking to construct the roadway and footpath to the satisfaction of the highway authority, and keep it in repair until it became a street repairable by the inhabitants at large. READ *v.* BULLEN - - - - **46 J. P. 359**

ROMAN CATHOLIC CHURCH — Marriage—British territory.
See HUSBAND AND WIFE—MARRIAGE. 1.

ROYAL PALACE—Jurisdiction of Ecclesiastical Courts.
See ECCLESIASTICAL LAW. 1.

RULES—BANKRUPTCY, 1870.
See LIST OF RULES.

RULES OF THE SUPREME COURT.
See LIST OF RULES.

S.

SALARY.
See MASTER AND SERVANT. 1, 7, 8.

SALE—Auction—Bankrupt's property—Purchase by trustee's partner.
See BANKRUPTCY—TRUSTEE. 2.

—— Auction — Written memorandum — Particulars—Mistake.
See FRAUDS, STATUTE OF. 1.

—— Decree for—Right of tenant in common who is mortgagee of entirety to.
See PARTITION. 2.

—— Free from incumbrance—Practice.
See CONVEYANCING ACT. 1, 2.

—— Reversionary interest — Undervalue—Common mistake.
See MORTGAGE. 9.

SALE OF GOODS—*Stoppage* in transitu—*Extension of Transit by Purchaser unknown to Vendor — Goods warehoused by Carrier.*] An unpaid vendor's right to stop delivery of goods whilst *in transitu* is not determined till the goods have been actually delivered to the purchaser or to his agent to keep the goods. Delivery to a Railway Co. is not such a delivery, though the Co. be nominated and employed by the purchaser to carry the goods. A purchaser ordered goods to be sent by rail to G., and at the same time, without the vendor's knowledge, instructed M. to ship the goods to R. upon their arrival at G. Some delay occurred at G., owing to the absence of a ship ready to take the goods, and the Railway Co. warehoused them at M.'s risk. Whilst there they were stopped:—*Held*, that the *transitus* was not at an end, M. being merely the agent to forward the goods, and the purchaser not intending to take possession of them till their arrival at R.: and that the vendor's right of stoppage *in transitu* had therefore been properly exercised. KENDALL (*or* KENDAL) *v.* MARSHALL - - **46 L. T. 693; 46 J. P. 631**

2. —— Warranty—On a sale of chattels, announced as made by virtue of a mortgage, there is no implied warranty of title. HARRIS *v.* LYNN **[37 Amer. R. 253 (U.S.)**

SALE OF GOODS—*continued.*

—— Delivery to carrier—Receipt—Acceptance.
See FRAUDS, STATUTE OF. 6.

SALMON FISHERY.
See FISHERY. 3.

SALVAGE—Apportionment—Deviation.
See SHIP. 12.

SATISFACTION—Advancement—Share of trust fund.
See TRUSTEE. 7.

SAVINGS BANK—*Deposits in Fictitious Names—Savings Banks Act* (26 & 27 *Vict. c.* 87), *ss.* 38, 48—*Friendly Societies Act*, 1875 (38 & 39 *Vict. c.* 60), *s.* 2—39 & 40 *Vict. c.* 52—*Mandamus—Practice.*] C., after the passing of 26 & 27 Vict. c. 87, deposited various sums in a savings bank in fictitious names, but with the knowledge of the officers of the bank. He had also deposits remaining in his own name previously made. The aggregate of the deposits exceeded £200, though the Commissioners for the Reduction of the National Debt had directed that the trustees of any savings bank should not add interest to any annual account so long as it continued at or above £200. C. died in 1880, and his personal representatives claimed the deposits, but the trustees refused to pay the sums deposited in fictitious names.

On an application by C.'s personal representative for a *mandamus* to the Assistant Registrar of Friendly Societies to hear and determine his claim as a dispute between him and the trustees:—*Held*, (1) that there was no forfeiture of the deposits under s. 38 of 26 & 27 Vict. c. 87; and (2), that the claim constituted a dispute within s. 48, which the Assistant-Registrar had jurisdiction to entertain; but (3) that the deposits in the fictitious names having been made illegally, and in wilful contravention of s. 38, and contrary to the policy of its provisions, the writ of *mandamus*, which is one *in subsidium justitiæ*, ought not to be granted. REG. *v.* LITTLEDALE **10 L. R. Ir. 78**

[N.B.—The Court of Appeal has affirmed the above decision.]

—— Trustee—Negligence—Personal liability.
See TRUSTEE. 8.

SCHOOL BOARD.
See ELEMENTARY EDUCATION ACTS.

SEAWEED—Patent from Crown—Trespass—Title.
See FORESHORE.

SECRET TRUST—For "missionary purposes"—Uncertainty.
See WILL—CONSTRUCTION. 28.

SECURITY—Destruction of, by accidental fire.
See CORPORATION. 2.

—— For costs—Foreign plaintiff.
See PRACTICE—COSTS. 8.

SEDUCTION—Loss of service—Minor daughter of Plaintiff in service of Defendant—Exemplary damages *held* proper—Evidence of Defendant's means *held* admissible—Intercourse procured by force does not take away right of action. LAVERY *v.* CROOKE - - - **38 Amer. R. 768 (U.S.)**

SEPARATE ESTATE.
See HUSBAND AND WIFE—WIFE'S PROPERTY.

SEPARATION DEED.
See HUSBAND AND WIFE—CONTRACTS BETWEEN. 1, 2.

—— Subsequent adultery—Maintenance.
See PRACTICE—DIVORCE. 2.

SERVANT.
See MASTER AND SERVANT.

SERVICE—Notice to assess damages before the Master.
See PRACTICE—SERVICE.

—— Of order upon lunatic out of jurisdiction.
See LUNATIC. 1.

—— Petition for payment out of Court.
See LANDS CLAUSES ACT. 5, 6.

SETTING ASIDE AWARD—Delay.
See ARBITRATION. 2.

SETTING ASIDE DEED—*Purchase by Trustee—Settlement of Purchase-money by* Cestui que Trust *—Voidable Sale — Rescission barred — Inquiry whether Rescission beneficial refused.*] An intestate having died leaving five children, four of them sons and one a daughter, his first and second sons took out administration to his estate. The youngest son was still an infant. All the five children, by a deed of family arrangement, mortgaged to trustees their respective interests in their father's estate for £1084, that being the amount of the shares of the daughter and infant son in the estate, as appeared from an account set out in a schedule and based on a valuation made a year before, in which the figures had been altered to correspond with the increase or decrease in the various items since the valuation and which shewed a balance giving £542 to each child. Subject to the mortgage, in respect of which specified sums were to be paid by the first, second, and third brothers, the trustees were to hold the property in trust for these three brothers; and the sums to be paid by them were to form a sinking fund for the reduction of the principal of the shares. The daughter, by her marriage settlement, executed subsequently, after reciting that she was entitled to the £542 under the former deed, settled it on herself, her husband, and the children of the marriage.

More than nine years after the deed of arrangement, the daughter, her husband, and infant children, brought an action against her brothers and the trustees of the deed of settlement, to have the deed of arrangement set aside, excepting so far as it was a security for £542 on account of her share; on the ground of infancy, undue influence, pressure, and want of legal advice, and to have the settlement rectified:—*Held*, that the evidence did not shew the impropriety specially alleged, but that, since the deed of arrangement constituted a purchase by the administrators of the intestate's estate, who were in the position of trustees, from two of their *cestuis que trustent* (and in such cases the parties must deal at arm's length, with full disclosure and entire absence of influence) the Plaintiffs were entitled, immediately after the execution of the deed, to have it set aside on the ground of the unsatisfactory nature of the valuation, and the purchasers not being at arm's length; and that the mere lapse of time was not necessarily a bar; but *held*, also, that the

SETTING ASIDE DEED—*continued.*

subsequent marriage settlement was a bar to the deed being set aside, for it was not established that the effect of setting aside the deed would be to benefit the parties interested under the settlement, which could not therefore be allowed to be varied, and, that being so, the Plaintiffs were not in a position, supposing the result of setting aside the deed were to shew that they had received too much under it, to make good to the Defendants the amount so due to them. *Held*, further, that in the present action no inquiry as to whether it would be for the benefit of the parties entitled under the settlement for the deed to be set aside and the settlement varied could be granted; for the brothers, who were parties to the action, had no interest in the determination of what was for the interest of the parties entitled under the settlement. *Re* WORSSAM. HEMERY *v.* WORSSAM
[51 L. J. Ch. 669; 46 L. T. 584

—— Release—Parental control.
See TRUSTEE. 7.

SETTLED ESTATES ACT—*Application of Purchase-money—Repairs*—40 & 41 *Vict. c.* 18, *s.* 34.] The Court granted an application that part of the proceeds of a sale under the direction of the Court, of some settled estates, might be expended in making an embankment to protect a farm, another part of the settled estate, from floods in the river on the banks of which the farm was situated. *Re* LEADBITTER - - - 30 W. R. 378

2. —— *Order—Variation of, passed and entered—Mistake arising from Omission—O.* XLI. *a.*] An order, made on petition under the Settled Estates Act, 1877, which had been passed and entered, was, upon a motion made under the above order, directed to be varied so as to dispense with the consents of tenants for life to the exercise of the leasing powers granted by the order. *Re* RILEY'S TRUSTS - - - 30 W. R. 78

3. —— *Petition for Confirmation of Contract for Sale—Re-investment of Purchase-money*—40 & 41 *Vict. c.* 18, *ss.* 34, 35, 36.] The Court, upon petition presented under the above Act for the confirmation of a contract for sale, and in exercise of the discretion conferred by s. 35, directed the re-investment of the purchase-money as provided by s. 34 without any further application to the Court. *Re* HOARE'S SETTLED ESTATES
[30 W. R. 177

4. —— *Practice*—40 & 41 *Vict. c.* 18, *s.* 37—*Leaseholds for Years—Sale—Tenant for Life—Diminution of Income—Compensation—Costs.*] Where leaseholds were sold under the Settled Estates Act, 1877, and the tenant for life suffered by reason of the sale a diminution of income, the Court directed a calculation to be obtained from an actuary of what equal half-yearly sums, for the residue of the term, the proceeds of the sale would produce, taking interest at 3 per cent., so as to exhaust that sum at the expiration of the term, and that in each half year the dividends on the stock then remaining, in which the proceeds of sale were invested, should be paid to the tenant for life, and so much of the stock transferred to the same person as, with the cash dividend, would make up the half-yearly sum so to be ascertained; the residue of the fund, if any, at the expiration

SETTLED ESTATES ACT—*continued.*

of the life interests to go to the persons absolutely entitled in remainder. *Askew* v. *Woodhead* (14 Ch. D. 27) applied.

The Court allowed the tenant for life the costs, as between solicitor and client, of the application for compensation. *In re* WALSH'S TRUSTS
[7 L. R. Ir. 554

5. —— *Practice—Title of Petition—Married Woman—Restraint on Anticipation—Settled Estates Act*, 1877 (40 & 41 *Vict. c.* 18)—*Conveyancing Act*, 1881 (44 & 45 *Vict. c.* 41), *s.* 39.] Where the Court, on a petition under the Settled Estates Act, 1877, makes an order, under s. 39 of the Conveyancing Act of 1881, binding the interest of a married woman who is restrained from anticipation, the petition need not be intituled under the latter Act. *Re* LANDFIELD. LANDFIELD *v.* LANDFIELD - - 46 L. T. 227; 30 W. R. 377

6. —— *Proceedings by Tenant for Life for Protection of Estate—Costs*—40 & 41 *Vict. c.* 18, *s.* 17—*Petition for Advice of Court*—22 & 23 *Vict. c.* 35, *s.* 30.] The tenant for life of certain settled estates incurred costs in opposing, successfully, a sewage scheme proposed by the sanitary authority of the parish where the estates were situated, on the ground that the value of the estates would be lessened by the works. The trustees of the settled estates applied, under s. 30 of 22 & 23 Vict. c. 35, for the advice of the Court, as to whether they would be justified in paying such costs out of money in their hands, representing the proceeds of part of the settled estates sold under an order made by the Court in 1874. The petition was entitled in the matter of the Settled Estates Act, 1856, and the Amendment Acts of 1858 and 1864, and the Act 22 & 23 Vict, c. 35. The Court was of opinion that s. 30 of 22 & 23 Vict. c. 35, gave the Court merely power to advise, and did not empower it to authorize the payment; but that the case came within s. 17 of the Settled Estates Act, 1877, and therefore ordered the petition to be amended by entitling it in the matter of that Act, when, on proof before the registrar of the sum spent by the tenant for life, not exceeding an amount named, the Court would advise the trustees to pay it. *Re* WILLAN'S SETTLED ESTATES - - - 45 L. T. 745

7. —— *Proceedings for Protection of Estate—Costs incurred by Tenant for Life—Lord St. Leonards' Act* (22 & 23 *Vict. c.* 35), *s.* 30—40 & 41 *Vict. c.* 18, *s.* 17.] Under s. 17 of the Settled Estates Act, 1877, trustees are justified in paying costs which the tenant for life has incurred in proceedings to prevent the erection of a sewage farm and works, so as to cause a nuisance to tenants of the estate, though such proceedings have not been sanctioned by the Court. Whether such payment could have been authorised before the Act of 1877, *quære.*

Re Earl de la Warr's Estates (16 Ch. D. 587) considered. *Re* TWYFORD ABBEY SETTLED ESTATES - - - - 30 W. R. 268

—— Actions for protection of estate—Past litigation—Costs.
See PRACTICE—COSTS. 9.

SETTLEMENT—Mistake—Description of trustees—Practice.
See TRUSTEE. 3.

SETTLEMENT—*continued.*

—— Rectification — Purchase by trustee from *cestui que trust.*
See SETTING ASIDE DEED.

SETTLEMENT OF PAUPER—Derivative—Residence for three years.
See POOR-LAW. 2.

SHAREHOLDER—Right of, to object to order sanctioning reduction of capital.
See COMPANY—REDUCTION OF CAPITAL.

—— Winding-up petition by—Vendor to Co.
See COMPANY—WINDING-UP. 17.

SHARES—Allotment of.
See COMPANY—WINDING-UP. 4, 9.

—— Issued at a discount—Power of directors to dispose of.
See COMPANY—DIRECTORS. 3.

—— Partly paid-up—Vendor's nominee.
See COMPANY—WINDING-UP. 8.

—— Settlement of—Accrued shares—Negligence.
See TRUSTEE. 5.

SHERIFF—Elegit—Costs of writ and inquisition.
See PRACTICE—COSTS. 5.

—— Sale by—Chattel interest in land—Demand of possession.
See LAND, ACTION FOR RECOVERY OF.

SHIP—*Charterparty—Bill of Lading—Lien for Freight—Demurrage—Liability of Assignee whose portion of Cargo is lost in Vessel.*] A ship was chartered for a voyage under a charterparty which provided that the shipowners should have "an absolute lien on the cargo taken on board for all freight, dead freight, and demurrage." There was no stipulation for demurrage for detention at the port of discharge. After a partial cargo of guano had been loaded by the charterer, the bills of lading for which in favour of consignees bore express reference to the charterparty, the master, with the charterer's concurrence, shipped other goods belonging to a third party. At the port of discharge no consignee appeared to claim this portion of the cargo (which proved insufficient to pay its freight), and some delay took place, partly on this account and partly caused by the fault of the consignees of the guano. In a question between the shipowners and the consignees of the guano:—*Held*, that the guano was under lien for the freight of the whole cargo, but that it was not subject to lien for the unliquidated claim of damages for detention of the vessel at the port of discharge; and (2) that the consignees of the guano were liable for the detention only in so far as caused by their fault. LAMB *v.* KASELACK
[9 C. of S. Cas. 482 (Sc.)

2. —— *Charterparty — Lien for Freight — Notice.*] The goods of a shipper in a vessel advertised as a general ship are not affected by a clause in the charterparty, of which he has neither notice nor knowledge, and by which the shipowner has a lien on all cargo and freight for overdue hire under the charterparty. *Semble*, the fact that no bills of lading were given for the goods makes no difference in this respect as to the rights and liabilities of the parties. T. hired a ship of M., and by the charterparty gave M. a lien on all cargo and freight for arrears of hire.

SHIP—*continued.*

T. advertised the ship as a general ship, giving no notice of the charterparty. B. shipped goods, and obtained a receipt, but no bill of lading. The hire being in arrears, M. detained B.'s goods for the entire arrears:—*Held*, that M. was not entitled to detain B.'s goods, and that B. was entitled to damages for their detention.
Peek v. *Larsen* (L. R. 12 Eq. 378) approved.
THE "STORNOWAY" - 51 L. J. P. D. A. 27
[46 L. T. 773

3. —— *Charterparty—Measurement—Custom.*] A charterparty provided that "a ship should load a cargo, and proceed to a port in Great Britain, and deliver the same on being paid freight at and after the rate of 35*s.* *per* 180 English cubic feet taken on board as *per* Gothenburg Custom":—*Held*, reversing the decision of Sir R. Phillimore (50 L. J. P. D. A. 46; 1881 Digest, col. 127) that the freight was to be ascertained by measuring the cargo, not according to the method employed at the port of discharge, but according to that used at Gothenburg. THE "SKANDINAV" - 51 L. J. P. D. A. 93 (C.A.)

4. —— Collision between steam vessels approaching end on, or nearly end on, in foggy weather—Both vessels being to blame, damages to be borne equally—Merchant Shipping Act, 1873 (36 & 37 Vict. c. 85), s. 17. LITTLE *v.* BURNS - - - 9 C. of S. Cas. 118 (Sc.)

5. —— *Collision — Fog — Moderate Speed — Sailing Vessel—Regulations for preventing Collisions at Sea*, 1879, *Art. XIII—Merchant Shipping Act*, 1873 (36 & 37 *Vict. c.* 85), *s.* 17.] The question as to what amounts to a "moderate speed" within the above article depends on the place where the ship is, and *semble* (*per* Cotton, L.J.) her handiness, and is not necessarily proportioned to or less than the maximum speed she can, under the circumstances, make. In the case of a sailing vessel out in the Atlantic a speed of about five knots is a "moderate speed," the vessel being at the time under all plain sail, and going as fast as she can with the wind on her quarter. *Per* Brett, L.J., a "moderate speed" for a sailing vessel is not necessarily the same as a "moderate speed" for a steamer, other circumstances being the same. THE "ELYSIA" 46 L. T. 840 (C.A.)

6. —— *Collision—Regulations for preventing Collisions at Sea, Art. XI.—Overtaking Vessels—Light Astern—Apprehension of Danger.*] The above article does not render it compulsory for a ship to shew from her stern a white or flare-up light to a vessel overtaking her, unless there is reason to apprehend danger from such overtaking vessel. THE "REIHER" - - 45 L. T. 767; [4 Asp. M. L. C. 478

7. —— *Collision—Regulations for preventing Collisions at Sea, Art. XII.—Mechanical Foghorn—Merchant Shipping Act*, 1873 (36 & 37 *Vict. c.* 85), *s.* 17—*Necessary departure.*] Where the mechanical foghorn of a sailing vessel has broken down, and a mouth horn is employed instead, the departure from Art. XII. of the Regulations is necessary, and the ship is free from blame. THE "CHILIAN" 45 L. T. 623; 4 Asp. M. L. C. 473

8. —— *Collision—"Running Free"—"Close-hauled"—"Wind Aft"—Sailing Regulations,*

SHIP—*continued.*

1879, *Art.* XIV., *rr.* (*a*), (*c*), *and* (*e*).] A collision took place between two sailing vessels, the P. and the S., which were crossing. The Court having come to the conclusion, upon conflicting evidence, that the S., though not strictly "close-hauled," was not "running," and that she was "free" at most two points, the wind being at farthest on her beam, while the wind was at most on the quarter of the P. almost certainly not more than three points from her course, and in all probability more nearly "aft":—*Held* (affirming the decision of the Judge of the Admiralty Court), that the S was "close-hauled" and the P. had the "wind aft," both within the meaning of Art. XIV. of the Sailing Regulations, issued in August, 1879, under 25 & 26 Vict. c. 63, and that the P. was therefore bound to have kept out of the way of the S., and was solely to blame for the collision. If the wind be at any less angle than 45 degrees with the line of a vessel's keel, it is a wind "aft" within the Article. THE "PRIVATEER" - - - **9 L. R. Ir. 105 (C. A.)**

9. —— *Collision—Thames Conservancy Rules—Vessels meeting.*] The question whether "two steam vessels proceeding in opposite directions, the one up, and the other down, the river" (Thames), "are approaching one another so as to involve risk of collision," is in every instance a question of fact for the Court, and is not subject to the same interpretation as that given by Art. 15 of the Regulations for Preventing Collisions at Sea, for vessels meeting end on or nearly end on. When two vessels are proceeding in such directions that their respective courses will, if continued, bring them so near each other as to cause a risk of collision, rule 22 of the Thames Conservancy Rules is imperative, and both vessels must so manœuvre as to pass port side to port side.

Semble, when two steam vessels are proceeding one up and the other down the river, and have their green lights only in sight each to each and bearing one point on each other's starboard bows at a distance of a quarter of a mile, they are approaching so as to involve risk of collision, and are both bound to port their helms to pass port side to port side. *Semble*, if each had the other's green light three points on the starboard bow they would not be approaching so as to involve risk of collision.

Observations on the distinction between Rules for Preventing Collisions at Sea, and those for the navigation of a river. THE "ODESSA"

[46 L. T. 77 (C.A.)

10. —— *Merchant Shipping Act*, 1854 (17 & 18 *Vict. c.* 104), *s.* 512.] Notice to Board of Trade of intention to bring action for damages in respect of collision.—Notice after action begun, held insufficient. HAGLUND *v.* RUSSELLS

[9 C. of S. Cas. 958

11. —— *Particulars—Action for Damage to Cargo.*] THE "RORY" - **51 L. J. P. D. A. 22**

[Now reversed, **L. R. 7 P. D. 117.**]

12. —— *Salvage — Apportionment—Deviation—Discretion of Judge—Interference with, by Court of Appeal—Statutory Signal of Distress.*] Where there is reason to believe that the Court of first

SHIP—*continued.*

instance has not taken into consideration the circumstance that rendering a salvage service to property is in itself a deviation in point of law, however small the deviation may be as a matter of fact, the Court of Appeal will alter the award of salvage made in the Court below.

In the case of a service rendered principally by means of the steam power of the salving ship, and which had occasioned a deviation in point of law, and in rendering which the crew were exposed to some peril, an apportionment of two-thirds to the shipowners and one-third to the master and crew was altered by the Court of Appeal to five-ninths to the shipowners and four-ninths to the master and crew, and the total award increased from £600 to £900; owners' share from £400 to £500; master's from £80 to £100, crew's from £120 to £300. THE "FARNLEY HALL" - - - **46 L. T. 216 (C.A.)**

13. —— Ship's husband, where also part owner, cannot bind co-owner by obtaining bail for release of vessel from seizure under civil process for collision and for repair. MITCHELL *v.* CHAMBERS - - - **38 Amer. R. 167 (U.S.)**

14. —— *Wages of Seamen—Liens, priority of.*] Where in an action for damage by collision, the owners of one ship have recovered judgment against another ship, they have, as against the proceeds of such other ship, a right prior to that of seamen who have recovered judgment against the same ship for wages, earned before and after the collision. THE "ELIN" **51 L. J. P. D. A. 77**

—— Collision in a dock—Admiralty jurisdiction.
See JURISDICTION.

—— Damage action against—Practice.
See PRACTICE—ADMIRALTY.

—— Insurance.
See INSURANCE—MARINE.

SHORTHAND NOTES—Costs of.
See LEASE.

SIGNATURE—Attesting witness resident out of jurisdiction.
See WILL—PROBATE. 3.

—— Will—Acknowledgment.
See Will—Probate. 1.

SIGNING JUDGMENT—County Court—Registrar's certificate.
See COUNTY COURT. 2.

SISTERS OF MERCY—Devise in trust for.
See WILL—CONSTRUCTION. 4.

SLANDER—Privilege—Malice—Probable cause.
See DEFAMATION. 2.

SLANDER OF TITLE—Notices by patentee alleging infringement.
See PATENT. 2.

—— Trade-mark—Interlocutory injunction.
See TRADE-MARK. 3.

SOLICITOR—*Bill of Costs—Action for Taxation by Third Party—Solicitors Act*, 1843 (6 & 7 *Vict. c.* 73), *s.* 39.] A *cestui que trust* cannot maintain an action against his trustee's solicitor for taxation of a bill of costs which the trustee has paid. The proper remedy is by an application under

SOLICITOR—*continued.*

sect. 39 of the above Act. Leave to amend refused. *Re* SPENCER; SPENCER *v.* HART **51 L. J. [Ch. 271; 45 L. T. 645; 30 W. R. 296 (C.A.)**

2. —— *Bill of Costs—Agreement between Solicitor and Client—Document signed by Client only—Taxation—Attorneys and Solicitors Act*, 1870 (33 & 34 *Vict. c.* 28), *ss.* 4, 8, 9, 15.] An "agreement in writing" to be within s. 4 of the above Act must be signed by both parties. A document, therefore, containing the terms of an agreement as to the amount of costs payable by a client to her solicitor, but signed by the client only, is not such an "agreement in writing," and the solicitor may be required to deliver a detailed bill of costs, to be taxed in the usual manner.

Re Lewis, Ex parte Munro (1 Q. B. D. 724) followed. *Ex parte* PITT. *Re* RAVEN **45 L. T. [742; 30 W. R. 134**

3. —— *Bill of Costs—Taxation—Common Order for—Solicitors Act*, 1843 (6 & 7 *Vict. c.* 73), *s.* 37.] A solicitor who proceeds under the common order for taxation (under the above section) must pay the costs of reference if the party chargeable fails to attend the taxation. Writing letters to the Taxing Master does not constitute attendance. *Re* UPPERTON **30 W.R. 840**

4. —— *Bill of Costs—Taxation—Mistake in Order—Practice—Delay.*] An order of course having been obtained for the taxation of a solicitor's bill of costs, the taxation was begun and practically completed.—*Held*, that an application to vary the order on the ground of an alleged error appearing on the face of it ought to have been made as soon as the error was found out, and not delayed until the taxation was practically completed. *Re* TIBBITTS - **30 W. R. 177**

5. —— *Bill of Costs—Taxation—Retention of Costs out of Cash in hand—Part Payment of Balance—Attorneys and Solicitors Act* (6 & 7 *Vict. c.* 73), *s.* 41.] A solicitor delivered to his client a bill of costs, and, on the next day, a cash account, which shewed, after deducting the bill of costs, a balance to the client's favour of £1 18*s.* 1*d.* The client, upon applying for such balance, was inadvertently paid £1 16*s.* only.—*Held*, that the client was entitled to the common order for taxation, as there had been no payment of the bill. *Re* ANGOVE (A SOLICITOR) **46 L. T. 280**

6. —— *Changing—Practice—Judicature (Ir.) Act*, 1877, *s.* 28, *subs.* 11.] Where a Plaintiff's solicitor, in consequence of his client's abusive conduct, refused to proceed with the action, and the Plaintiff thereupon entered the ordinary rule to change, and afterwards applied to amend the order by omitting the usual condition as to costs, the Court made no rule upon the motion, the solicitor undertaking forthwith to hand over all papers and documents, save original deeds; and also to attend and produce at the trial any deeds connected with the case and in his possession, the Plaintiff undertaking to return all such documents within ten days after the trial; with liberty for the solicitor to issue execution for the amount of his taxed costs, if not paid within fourteen days after taxation. RIORDAN *v.* COAKLEY - - - - **10 L. R. Ir. 22**

7. —— *Lien*—Chose in action—*Policy*—*Notice.*] The lien of a solicitor on an insurance policy is not lost by want of notice to the obligee, against assignees who give notice. WEST OF ENGLAND BANK *v.* BATCHELOR **51 L. J. Ch. 199; [46 L. T. 132; 30 W. R. 364**

8. —— *Lien on Deeds and Documents—Lodgment in Court of Bankruptcy.*] S. and M., solicitors, obtained possession in the course of business of certain deeds and documents, the property of W., whose solicitors they were, and retained possession of same, subject to a lien for costs due by W. to them. W. was subsequently adjudicated a bankrupt, and his assignees applied for an order that S. and M. should deliver up to them the deeds and documents so in their possession. The Court refused the application. *In re* WATTERS - - - **7 L. R. Ir. 531**

9. —— *Lien—Payment into Court—Order for delivery over of Documents.*] Where the clients of a discharged solicitor apply for delivery over of all documents in his possession, and at the same time undertake to pay into Court a sum amply sufficient to secure the solicitor in respect of all demands, the Court will, where circumstances of urgent necessity are shewn, make the order required.

Richards v. *Platel* (Cr. & P. 79) reconciled. *Re* SOUTH ESSEX EQUITABLE INVESTMENT CO. **[46 L. T. 280**

10. —— *Lien—Practice*—39 & 40 *Vict. c.* 44, *s.* 3—*Form of Application by Solicitor claiming Lien under Act—Arbitration.*] A reference to arbitration having been made in an action, the arbitrator awarded that a certain sum should be paid by the Plaintiff to the Defendant, and the award was confirmed by the Court. An order was made on the application of the Defendant's solicitor, under the 3rd section of 39 & 40 Vict. c. 44, declaring him entitled to a lien for the costs of the Defendant in the action upon the amount awarded, as property recovered or preserved for the Defendant through the instrumentality of the solicitor; and directing the Plaintiff to pay thereout to the solicitor the amount of such costs when taxed. M'ALEAVEY *v.* M'ALEAVEY - - - **9 L. R. Ir. 165**

11. —— *Qualification—County Court—Unqualified Person acting as Solicitor—Claim for Services and Disbursements—County Courts Act*, 1846 (9 & 10 *Vict. c.* 95), *s.* 91—*Solicitors Act*, 1874 (37 & 38 *Vict. c.* 68), *s.* 12.] A person not duly qualified as a solicitor brought an action for Court fees paid by him on commencing a County Court action on the Defendant's behalf, and as preparatory to the hearing, and for remuneration for services rendered in the action out of Court.—*Held*, that the claim was barred by sect. 12 of 37 & 38 Vict. c. 68. VERLANDER *v.* EDDOLLS **[51 L. J. (Q.B.) 55; 45 L.T. 543; 30 W. R. 104; [46 J. P. 229**

12. —— *Qualification—Person not duly qualified acting as Solicitor—Contempt of Court—Attachment*—6 & 7 *Vict. c.* 73, *s.* 2—23 & 24 *Vict. c.* 127, *s.* 26.] S., an accountant, was instructed to collect a debt. Failing to recover the money, he issued a writ which purported to be issued by Smale, a solicitor, but was not in fact

SOLICITOR—*continued.*

signed by or on behalf of a solicitor as required by O. v., r. 7, and the address for service given upon the writ was that of S. After service of the writ, and after the summons had been taken out to stay proceedings on the ground that O. v. r. 7, had not been complied with, S. telegraphed to Smale, who was in London, asking for a reply that the writ was issued with his authority and privity. Smale was under the impression that S. was acting as clerk to a solicitor in whose service S, had formerly been, and with whom he had previously had transactions as his agent, and therefore replied that the writ was so issued. The Incorporated Law Society obtained a rule calling upon S. to shew cause why a writ of attachment should not issue against him for contempt of Court in having acted as a solicitor contrary to the above statutes :—*Held*, that the rule must be discharged upon payment by S. of all costs, there not being sufficient evidence to shew that S. had put himself forward as actually acting as a solicitor. DOCKINGS *v.* VICKERY. *Re* SYMONS **46 L. T. 139**

—— Acting for both parties to sale—Negligence.
See MORTGAGE. 9.

—— Authority of, to receive deposit on sale by Court.
See PARTNERSHIP. 4.

—— Deposit of deeds—Partnership—Receiver.
See PARTNERSHIP. 1.

—— Insolvent—Advance to, for investment.
See MORTGAGE. 1.

—— Lien—Inspection of documents—Copies.
See PRACTICE—DISCOVERY—DOCUMENTS. 3.

—— Parties to actions—Observations on making solicitors.
See VENDOR AND PURCHASER. 4.

—— Privileged communication.
See EVIDENCE. 8.

SPECIAL CASE—Power of Court to order statement of—Election petition.
See MUNICIPAL CORPORATION.

SPECIFIC PERFORMANCE — *Mistake through Purchaser's Negligence — Particulars of Sale.*] Particulars of sale of cottages let to weekly tenants were issued in September, headed "Particulars and Conditions of Sale, First Edition," and stating that the property would be sold on the 18th October. There were no conditions of sale in the document, which described Lot 8 as a corner house and cottages, without mentioning any mortgage.

The vendors having, before October 18th, discovered that a mortgage upon Lot 8 could not be paid off for some years, issued a second edition of the particulars, postponing the sale till November 16th, and stating that Lot 8 would be sold subject to the mortgage.

The Defendant attended the sale on November 16th with a copy of the first edition only, and bought Lot 8, signing the contract upon a copy of the second edition, from which the auctioneer had read the particulars. The auctioneer had also stated, in the hearing of the Defendant, that Lot 8 would be sold subject to the mortgage.

On the Defendant's refusal to complete his contract, on the ground that he had bought Lot 8 thinking it free from incumbrance :—*Held*, that the vendor was entitled to specific performance, for the mistake was due to the gross negligence of the Defendant himself.

SPECIFIC PERFORMANCE—*continued.*

Each edition of the particulars described Lot 8 as "producing £73 14*s.* a-year;" a sum not at that time actually received, but which would, as notice had been given to the tenants, be payable upon the completion of repairs then contracted to be done before the day fixed for completion. The corner house was described as let to a responsible tenant for a term of which seventeen years were unexpired. It appeared that only fifteen years were unexpired, and that the term was determinable in 1881 or 1888 at the tenant's option :—*Held*, that neither of these statements was such a misrepresentation as would enable the Defendant to resist specific performance. GODDARD *v.* JEFFREYS **51 L. J. Ch. 57 ; 45 L. T. 674 ; [46 L. T. 904 ; 30 W. R. 269 (C.A.)**

2. —— *Railway Co.—Undertaking to erect a Siding—Damages.*] A Railway Co. agreed to erect a siding from their line to the Plaintiffs' mill. The siding was made, but the Plaintiffs not having used it, the Co. removed the points, undertaking (in 1871) to replace them on receiving sufficient notice of an intention to use the siding.

In November, 1879, the siding not having been used, the Co. removed the rails, and the Plaintiffs having required them to be replaced, its secretary wrote to the Plaintiffs that the rails had been removed under a misapprehension, and would be replaced at once, or that the directors would undertake to do so at any time when called on.

By Regulations of the Board of Trade issued in July, 1879, signals, &c., were to be provided on the opening of any siding which had not been in use before that time.

In 1880 the Plaintiffs required the Co. to replace the siding, and the secretary replied, requesting the Plaintiffs to indemnify the directors against the expenses occasioned by the regulations of the Board, in consequence of the non-user of the siding, if they required it to be replaced.

This the Plaintiffs refused to do. In an action for specific performance of the agreement to replace the siding :—*Held*, (1) That the non-user of the siding and the expenses caused thereby under the Regulations of the Board of Trade was no defence, and that the Co. was not entitled to any indemnity against those expenses. (2) That the Plaintiffs were entitled to a decree to replace the siding and keep it in working order, the Court considering damages an insufficient remedy.

Wilson v. *Northampton, &c., Railway Co.* (L. R. 9 Ch. 279), and *Powell Duffryn Steam Coal Co.* v. *Taff Vale Railway Co.* (L. R. 9 Ch. 331) considered and distinguished. TODD *v.* MIDLAND GREAT WESTERN RAILWAY CO. - **9 L. R. Ir. 85**

—— Mistake—Auction—Particulars.
See FRAUDS, STATUTE OF. 1.

—— Parol agreement to take lease.
See FRAUDS, STATUTE OF. 5.

—— Separation deed, executed on compromise of divorce petitions.
See HUSBAND AND WIFE—CONTRACTS BETWEEN. 2.

SPECIFICATION—Patent.
See PATENT. 3, 4.

STAIRCASE—Building including distinct tenements.
See LANDLORD AND TENANT. 2.

STAMP—Bill of exchange—Evidence of amount of.
See BILL OF EXCHANGE. 5.

STATEMENT OF CLAIM—Non-delivery of—Order dismissing action.
See PRACTICE—PLEADING. 1.

STATEMENT OF DEFENCE.
See PRACTICE—PLEADING. 2, 3, 6.

STATION—Invitation to alight—Condition of platform.
See CARRIER—PASSENGERS. 3.

STATUTE—Local Act—Promotion of bill—Consent of ratepayers.
See LOCAL ACT.

STATUTE OF FRAUDS.
See FRAUDS, STATUTE OF.

STATUTE OF LIMITATIONS.
See LIMITATIONS, STATUTE OF.

STATUTES.
See LIST OF STATUTES.

STAYING PROCEEDINGS—Pending appeal to House of Lords.
See PRACTICE—STAYING PROCEEDINGS.

STOCK EXCHANGE—Custom of—Dealings with broker—Bought note.
See TRUSTEE. 6.

STOPPAGE IN TRANSITU—Goods warehoused by carrier—Extension of transit by vendor.
See SALE OF GOODS. 1.

STREET—New—Undertaking to construct roadway—Paving.
See ROADWAY.

—— New—Width of—Bye-laws.
See PUBLIC HEALTH ACTS. 1.

SUBPŒNA DUCES TECUM—Description of documents to be produced.
See EVIDENCE. 10.

SUBSTITUTIONAL GIFT—Legacies to same persons by different instruments.
See WILL—CONSTRUCTION. 15, 16.

—— To issue—Parent dead at date of will.
See WILL—CONSTRUCTION. 27.

SUCCESSION DUTY—Timber, trees, or wood.
See REVENUE. 6.

SUPPORT—*Adjacent—Easement of necessity—Implied Reservation.*] Where the owner of a piece of land conveys away a portion thereof, upon which houses are erected, there is, upon such a conveyance, an implied reservation of the right to the support of the houses from the adjoining portions of the land. Such right is an easement of necessity, and neither the owner nor anyone claiming under him is entitled to do acts upon the adjoining portions of the land so as to cause damage or injury to the houses. SHUBROOK (*or* SHERBROOK) *v.* TUFNELL. (No. 1.)
[46 L. T. 886; 46 J. P. 694

SUPPORT—*continued.*
—— Barriers in coal seams—Subjacent strata.
See MINES. 1.

—— Of highway, by wall—Repair.
See EASEMENT. 2.

—— Surface—Injury to buildings by mining operations.
See MINES. 2.

SURETY.
See PRINCIPAL AND SURETY.

—— To be of good behaviour—Jurisdiction of justices.
See JUSTICE OF THE PEACE. 3, 4.

SURFACE WATER.
See WATER AND WATERCOURSES. 4—6.

SURVEYOR—Highway authority—Certificate—Highways, &c., Act, 1878.
See HIGHWAY. 1, 2.

SURVIVOR—Power to appoint by will given to, of two life tenants.
See POWER OF APPOINTMENT. 5.

SURVIVORSHIP—Will—Joint tenancy.
See WILL—CONSTRUCTION. 12.

T.

TAXATION OF COSTS.
See SOLICITOR. 1—5.

TELEGRAM—Admissibility of, in evidence.
See EVIDENCE. 9, 10.

TENANT FOR LIFE—Actions by, for protection of estate—Past litigation—Costs.
See PRACTICE—COSTS. 9.

—— Allowed to get possession of trust fund—Release of trustees.
See TRUST. 7.

—— Of settled estates.
See SETTLED ESTATES ACT.

TENANTS IN COMMON—Partition.
See PARTITION.

—— Wrongful possession—Extinguishment of right.
See LIMITATIONS, STATUTE OF. 2.

THAMES CONSERVANCY RULES—Vessels meeting.
See SHIP. 9.

TIMBER—Haulage of, in timber district—Extraordinary traffic.
See HIGHWAY. 3.

TIME—Appeal from County Court—"Forthwith."
See BANKRUPTCY—APPEAL. 1, 2.

—— Appeal to Privy Council, from Calcutta Admiralty Court.
See PRACTICE—APPEAL. 4.

—— Extension of, for delivering notice of trial.
See PRACTICE—TRIAL. 2.

—— Extension of—Writ—Indorsement of service.
See PRACTICE—WRIT.

—— Reference to arbitration—Partnership.
See ARBITRATION. 4.

TITHE RENT-CHARGE—*Union of Benefices—Evidence of Union—Remedy for Recovery of Tithes—Limitations—Practice—Co-Plaintiffs—Inconsistent Relief.*] The parish church of K. (a rectory) becoming, in the year 1593, ruinous, the parishioners of the adjacent parish of W. (a perpetual curacy) entered into an agreement by which the parishioners of K. were admitted to the use of the church at W. and to the benefit of all usual ecclesiastical offices, which were from that time performed by the incumbents for the time being of W. for the parishioners of both K. and W. From 1605 onwards there was no separate presentation to the benefice of K., but the livings of K. and W. were not formally united, although the holders of the living of W. for the time being were cited as rectors of K., and made official returns and paid charges in that capacity. In 1844 the Tithe Commissioners awarded a tithe rent-charge in respect of lands at K., which then were and had since remained the property of the Defendants and their predecessors in title. The holder of the benefice of W. claimed the tithe rent-charge on the ground that there had been a union of his benefice with that of K., and that the profits of the latter benefice belonged to the holder of the united benefices:—*Held*, that no legal or effectual union, sufficient to sustain such a claim, had been effected:—*Held*, also, that no receipt of the tithe rent-charge by the Defendants or their predecessors in title could be shewn, and that the Defendants were therefore not liable to account.

Semble, that the statute limiting the time for recovering tithes (2 & 3 Will. 4, c. 100) would not have operated as a bar to the claim.

Semble, that the remedy for arrears would not have been against the owner, but the occupier, of the lands charged.

Semble, antagonistic cases cannot be combined by co-Plaintiffs in an action, and that, as the claim of the Attorney-General was founded upon a case which could not succeed but upon the failure of that of the informant and co-Plaintiff, he was not a proper party to this action. ATT.-GEN. *v.* DURHAM (EARL OF) - **46 L. T. 16**

TITHES—Compulsory purchase of land subject to.
See LANDS CLAUSES ACT. 2.

TITLE—Warranty of—Implied, on sale of chattels.
See SALE OF GOODS. 2.

—— Waste of manor—Commonable rights over.
See VENDOR AND PURCHASER. 6.

TITLE-DEED—Possession of—Right to, as between trustee and heir-at-law.
See TRUSTEE. 9.

TOLLS—Rateability of.
See MARKET.

TOMBSTONE — *Right to remove.*] A mother erected a tombstone on her son's grave, the ground for which had been purchased with his own funds. The stone was erected, without consulting the deceased's brother, his sole next of kin and executor, two years after his death. Two years after the erection of the stone the brother removed it:—*Held*, that the mother was entitled to have the stone restored. WRIGHT *v.* WRIGHT **[9 C. of S. Cas. 15 (Sc.)**

TORT — Continuing cause of action—Further damages.
See ESTOPPEL.

TOWNS IMPROVEMENT CLAUSES ACT—*Paving Expenses—Right of Action for*—20 & 21 *Vict. c. xxxvii., ss.* 16, 20—10 & 11 *Vict. c.* 34, *ss.* 53, 149—*Local Government Supplemental Act*, 1864 (27 & 28 *Vict. c.* 83).] By a local Act for the borough of Portsmouth, ss. 53, 149, 156 of the Towns Improvement Clauses Act, 1847, were incorporated, with, however, the proviso that s. 53 should "be construed as if the word 'owners' were substituted for the word 'occupiers.'"

By the Local Government Supplemental Act of 1864, s. 156 of the 1847 Act, and the succeeding sections dealing with private improvement expenses were struck out of the Portsmouth Local Act. The urban sanitary authority of Portsmouth, representing the commissioners mentioned in the above sections, incurred certain paving expenses within the above s. 53, and sought to recover the same by action from the owners of the abutting lands. The Defendants in their statement of defence alleged that such expenses could not be recovered directly by action, but that a rate must be made in respect of them, as in the case of private improvement expenses;—*Held*, on demurrer to the defence, that the last words of s. 53 were in effect repealed by the repeal of s. 156 and the following sections relating to private improvement expenses, and that, consequently, no special remedy being provided for the recovery of expenses under s. 53, an action would lie, independently of s. 149, to recover the same. —Judgment of Field, J. (46 J. P. 23) affirmed. PORTSMOUTH (MAYOR, &C., OF) *v.* SMITH **46 L. T. [552 (C. A.)**

TRACTION ENGINE—Extraordinary traffic.
See HIGHWAY. 4.

TRADE—Direction in will to carry on.
See WILL—CONSTRUCTION. 10, 11, 26.

TRADE CUSTOM — Evidence of—Practice of average adjusters.
See INSURANCE, MARINE. 2.

TRADE-MARK—*Infringement.*] Family name cannot be made a trade-mark, so as to exclude others of same name using it, unless unfair means are adopted to mislead purchasers. MARSHALL *v.* PINKHAM - - **38 Amer. R. 756 (U.S.)**

2. —— *Infringement.*] "Pride" *held* good trade-mark for cigars. HIER *v.* ABRAHAMS **[37 Amer. R. 589 (U.S.)**

3. —— *Infringement—Slander of Title—Interlocutory Injunction.*] A Plaintiff who seeks an interlocutory injunction to restrain the Defendant from issuing circulars, &c., alleging the wrongful user by the Plaintiffs on articles of his manufacture of labels to which the Defendant laid claim, and from threatening the Plaintiff's customers with legal proceedings for selling his articles bearing the labels in question, must satisfy the Court of the untruth of the statements he complains of:—*Held*, also, that the fact that the Defendant, having commenced actions against the Plaintiff and his customers for injunctions to restrain the wrongful user of the labels in question, had not chosen to move for interlocutory injunctions, was of itself no ground for granting

TRADE-MARK—*continued.*

the injunction sought by the Plaintiff. ANDERSON *v.* LIEBIG'S EXTRACT OF MEAT CO. **45 L. T. [757**

4. —— *Registration — Old Marks—Limited Registration—Similarity—Trade-Marks Registration Act*, 1875 (38 & 39 *Vict. c.* 91), *s.* 6.] Old trade-marks, whether cutlers' or not, can be registered up to the number of three by different persons in respect of the same goods, even if identical; but this does not apply to new marks, and, if the same old mark has been used in respect of the same goods by more than three different persons, it is a common mark. A new mark may be registered in respect of some of the goods in a class, though a similar old mark is already registered for other goods in the same class, if the goods are distinct. A trade-mark which was used before the above Act came into operation is an old mark only in respect of the goods on which it was used. When applied to other goods it is to be treated as a new mark, and will not be granted registration if it clashes with another mark which is, in respect of such goods, old.

In order to determine questions as to the similarity of trade-marks, the proper method is to compare them as they are actually used: as, for example, when stamped on metal goods. *Re* JELLEY'S APPLICATION - - **46 L. T. 381, n.**

5. —— *Validity—Combination of Letters—Pattern Mark — Trade-Marks Registration Act*, 1875 (38 & 39 *Vict. c.* 91).] Where a series of different combinations of letters are used as trade-marks by a manufacturer on his goods, such combinations serving to signify (1) that the goods are manufactured by the person who uses the mark, and (2) the quality of the goods as compared with other goods made by the same manufacturer and bearing other combinations of letters from the same series; such marks, if used exclusively by the manufacturer, are valid trade-marks, notwithstanding they indicate the quality of the goods on which they are used. RANSOME *v.* GRAHAM - **51 L. J. Ch. 897; 47 L. T. 218**

TRADE NAME—Assumed—Injunction to restrain use of—Medical practitioner—Injury to reputation — Agreement to discontinue use of name. OLIN *v.* BATE - - **38 Amer. R. 78 (U.S.)**

2. —— *Newspaper—Right of Owner to exclusive Use of Word as Name—Injunction.*] Where the proprietor of a newspaper called the "Newcastle Chronicle" brought an action to restrain the Defendant from publishing in the same town a newspaper having for its name the word "Chronicle" in conjunction with another word, that is to say, "Sporting Chronicle":—*Held*, reversing the decision of North, J., that the injunction must be refused, for the employment by the Plaintiff, even for many years, of two words in common use as the title of his paper did not give to him a right to prevent the Defendant's use of one of them, in conjunction with another, there being no evidence of any one having been deceived, nor any apparent intention on the Defendant's part to deceive, and the appearance and contents of the two papers being quite different. COWEN *v.* HULTON. - - **46 L. T. 897 (C.A.)**

TRAFFIC—Extraordinary.
See HIGHWAY.

TRESPASS—Action for—Embarrassing reply.
See PRACTICE—PLEADING. 7.

—— Coal mine—Wrongful severance and sale.
See MINES. 3.

—— Foreshore—Patent from Crown.
See FORESHORE.

TRIAL.
See PRACTICE—TRIAL.

TRIBUTARY — Fishery district — Certificate of Secretary of State.
See FISHERY. 2.

TRUST.
See TRUSTEE.

TRUST FUND—Following—Banker's lien.
See BANKER. 3.

TRUSTEE — *Appointment of New—Husband of Woman interested in Trust Estate for Separate Use appointed one of New Trustees—Form of Order —Trustee Act*, 1850 (13 & 14 *Vict. c.* 60).] The Court, with the consent of a lady interested under a will in certain property for her separate and inalienable use, appointed her husband one of two new trustees of the will, no other person being obtainable; the order directing that if and upon his becoming sole trustee a new trustee should be appointed. *Re* PARROTT - **30 W. R. 97**

2. —— *Appointment of New — Trustee Act*, 1850 (13 & 14 *Vict. c.* 60), *s.* 32—*Conveyancing Act*, 1881 (44 & 45 *Vict. c.* 41), *s.* 31.] A power to appoint new trustees in every case where a trust is subsisting having been conferred by s. 31 of the Conveyancing Act, 1881, applications should not now be made to the Court under s. 32 of the Trustee Act, 1850, for the appointment of new trustees, unless there there is some reason making it "difficult, inexpedient, or impracticable to appoint them without the assistance of the Court," other than the mere absence in the instrument creating the trust of a power to do so. *Re* GIBBON'S TRUSTS **45 L. T. 756; 30 W. R. 287**

3. —— *Appointment—Practice – Trustee Acts —Misnomer of Trustee in Settlement.*] Order appointing trustees of a settlement, one of the trustees named in it residing permanently abroad, and the other having been wrongly described in the settlement. *In re* IRWIN'S TRUSTS **[9 L. R. Ir. 19**

4. —— *Constructive—Breach of Trust—Notice of intended—Refusal to pay Debt owing to Trust Estate—O. XVI. r.* 7.] A debtor to a trust estate who has notice of an intended breach of trust in the application of the amount of his debt, when paid, is justified in refusing to pay it. HONE *v.* ABERCROMBIE - - - **46 J. P. 487**

5. —— *Liability of—Settlement of Shares—Accrued Shares—Negligence of Trustee.*] By a marriage settlement gas shares were settled upon trust for the wife for life, then for the husband for life, then for their children. New shares were allotted in respect of the original shares, and the husband, without the trustee interfering, obtained possession of the shares, the old as well as the new, paid calls on the latter, and mortgaged them all, afterwards becoming a bankrupt:—*Held*,

TRUSTEE—*continued.*

reversing the decision of Fry, J. (50 L. J. Ch. 747; 45 L. T. 139; 29 W. R. 926; 1881 Digest, col. 138); that the value of the shares less the amount paid for calls was all that the trustee was liable to make good to the estate. BRIGGS *v.* MASSEY [51 L. J. Ch. 447; 46 L. T. 354; 30 W. R. 325 (C. A.)

6. —— *Negligence—Investment—Employment of Broker—Loss of Trust Fund—Liability of Trustee.*] G., a sole acting trustee and executor, directed a broker to invest £15,000, the amount of the trust fund, in the securities of three corporations. On the 24th Feb. the broker handed to G. what purported to be a bought-note for £5000 "debenture stock" in each of three corporations (of which only two were issuing debentures). The note named no day for settlement, and contained no charge for commission, stamp, or registration fee; and on the appearance of it, and from the evidence, the Court held that it represented that the broker had applied direct to the corporations for the securities. G., on being informed by the broker that he required the money next day, drew cheques for the amount to the broker's order. The proceeds were misapplied by the broker, who filed a liquidation petition on the 28th March.

Between the 25th Feb. and 28th March, the trustee inquired for the securities, but was told by the broker that they were not yet ready:—*Held*, that G. had not exercised proper care, but was guilty of negligence, and so must make good the loss to the trust fund.

In dealing with brokers on the Stock Exchange, there is no custom by which a trustee would be justified in paying money to the broker without anything to shew for it but a mere bought-note. *Re* SPEIGHT. SPEIGHT *v.* GAUNT

[51 L. J. Ch. 715; 46 L. T. 726; 30 W. R. 785

[N.B.—The Court of Appeal has reversed the above decision: *see* W. N. 1883, p. 4.]

7. —— *Release—Tenant for Life allowed to get Possession of Trust Fund—Parental Control—Advancement—Satisfaction.*] In 1832, by the marriage settlement of R. (the intended husband) and H. (the intended wife), real and personal estate belonging to H. was conveyed to trustees in trust for R. for life, and, after the death of the survivor of R. and H., in trust for the children of the marriage, as R. and H. or the survivor should appoint, and in default of appointment for the children equally. The trustees allowed R. to obtain possession of the trust fund, which he mixed with his own moneys, and in 1861 one of the trustees commenced a suit to compel him to replace the fund. By an arrangement between the trustees and R., the latter and H., by deed of the 25th Sept., 1861, irrevocably appointed the fund equally among the children, four of whom were of age, and one (the Plaintiff) a minor. On the following day the four adult children, and two years afterwards the Plaintiff (being then of age), executed a deed releasing the trustees from the trusts of the settlement. The children executed the release under their father's directions, without any professional advice or assistance, and in ignorance of its contents or effect, and of their rights under the settlement. R. from time to time paid sums of money for the Plaintiff. He purchased for him a commission in the army, paid for his outfit, &c., made him an adequate yearly allowance, and paid a large sum for his promotion.

TRUSTEE—*continued.*

No one of the sums so advanced was equal to the Plaintiff's share of the trust fund, nor was there any evidence that it was stated at the time when the advances were made, or understood between the Plaintiff and R., that they were made out of the trust fund in R.'s hands:—*Held* (affirming the decision of Sullivan, M.R.) (1) that the release should be set aside; (2) that R.'s position was that of a debtor to his five children for their respective shares of the trust fund. (3) That R. was not entitled to credit for the sums advanced, for they, being respectively of smaller amount than the Plaintiff's share, were not a satisfaction thereof *pro tanto*. READE *v.* READE

[9 L. R. Ir. 409 (M. R. & C. A.)

8. —— Savings bank—Personal liability for negligence—Degree of prudence required by law. HUN *v.* CARY - - 37 Amer. R. 546 (U.S.)

9. —— *Title Deed of Property in Hands of—Right to Possession of Title Deed as between Trustee and Heir-at-law.*] By deed executed in 1862 certain freehold property was conveyed to C. in fee. In 1865 C., by an ante-nuptial settlement, in consideration of his marriage with a sister of the Defendant, charged such property with the payment, after C.'s death, of an annuity of £12 to her for life, and secured the same by a grant of the said property to the Defendant, as trustee for his sister, for a term of 100 years, with the usual powers of distress and entry, &c, in case of the quarterly payments of the annuity being in arrear. C., upon the execution of the settlement, handed the deed of 1862 to the Defendant, and said to him, "You shall have the deed of the house to hold in your possession for the safety of your sister;" and at the same time the Defendant signed a written acknowledgment of the receipt of the conveyance, and an undertaking to deliver it up to C. or his assigns, on the fulfilment of the trusts of the settlement.

The marriage took place, and on the death, in 1875, of C., the Plaintiff, as his eldest son and heir-at-law, brought an action against the Defendant to recover possession of the deed of 1862:—*Held*, that the Defendant was entitled, as the trustee of the settlement, to retain possession of the deed in question during the continuance of the trusts of the settlement, on the ground that it was delivered to him by C. as a further security for the payment of the annuity, and that the possession of it enabled him to perform the trusts of the settlement better. CORIN *v.* THOMAS

[46 L. T. 916

—— Administration action by—Costs.
See EXECUTOR—ACTIONS. 1.

—— Appointment of new—Jurisdiction—Vesting order.
See LUNATIC. 2.

—— Deposit of trust funds—Following trust money.
See BANKER. 3.

—— Discretionary power—Interference by Court.
See WILL—CONSTRUCTION. 1.

TRUSTEE—*continued.*

—— Implied trust to invest personalty in purchase of realty.
See WILL—CONSTRUCTION. 9.

—— In bankruptcy.
See BANKRUPTCY—TRUSTEE.

—— Injunction against—Breach by new trustees.
See CONTEMPT OF COURT. 1.

—— Liability—Administratrix—Rate of interest payable by.
See ADMINISTRATOR. 4.

—— Of marriage settlement—Grant of administration to.
See ADMINISTRATOR. 3.

—— Payment out of Court to—"Persons absolutely entitled."
See LANDS CLAUSES ACT. 6.

—— Precatory trust—Will.
See WILL—CONSTRUCTION. 29.

—— Purchase by, from *cestui que trust.*
See SETTING ASIDE DEED.

—— Release—Liability respecting disclaimed lease.
See BANKRUPTCY—PROOF. 2.

—— Resulting trust—Failure of trusts of *corpus.*
See MARRIAGE SETTLEMENT.

—— Secret trust for "missionary purposes"—Uncertainty.
See WILL—CONSTRUCTION. 28.

—— Solicitor of—Bill of costs—Action for taxation by *cestui que trust.*
See SOLICITOR. 1.

U.

UMPIRE—Interest of—Objection to award on ground of.
See ARBITRATION. 2.

UNDUE INFLUENCE—Husband and wife—Gift, intended to operate as will, from husband, aged and weak in mind and body, to wife.—*Onus probandi.* HAYDOCK *v.* HAYDOCK
[38 Amer. R. 385 (U.S.)

UNION ASSESSMENT—Committee—Appointment of valuer—Valuation expenses.
See POOR-RATE. 3.

UNLAWFUL ASSEMBLY—Authority of justice to disperse.
See JUSTICE OF THE PEACE. 1.

V.

VALUATION—Expenses—Liability of guardians for.
See POOR-RATE. 3.

VENDOR AND PURCHASER—*Contract for Sale of Lease—Performance by Vendor of Covenant to repair—Evidence.*] The vendor, upon an open contract for the sale of the lease of a house, as an answer to a requisition by the purchaser as to the performance of covenants to repair, produced a receipt for rent up to a year previously, but could not produce the last receipt, the lessor having, on the ground of alleged breaches of covenant, refused to receive his rent; and, on the same ground, commenced an action of ejectment against the vendor. This action had, however, been stayed, as the Plaintiff had failed to comply with an order for the delivery of particulars of claim. The vendor filed an affidavit that to the best of his knowledge and belief all the covenants in the lease had been duly performed, and that he had executed certain specific repairs. The purchaser had an opportunity to inspect the premises, but adduced no evidence of any breach:—*Held,* that there was such *primâ facie* evidence of the performance of the covenants as constituted a sufficient answer to the requisition. RINGER *to* THOMPSON - **51 L. J. Ch. 42; 45 L. T. 580**

2. —— Execution of conveyance by owner of real estate, under fictitious name:—*Held,* that grantee obtained a good title. DAVID *v.* WILLIAMSBURGH INSURANCE CO.
[38 Amer. R. 418 (U.S.)

3. —— *Lunatic Devisee, Administration Action by, of Realty subject to Debts—Order in Action for Sale of Realty—Trustee Extension Act,* 1852 (15 & 16 *Vict. c.* 55), *s.* 1—*Order in Lunacy unnecessary.*] A devisee of realty, subject to payment of debts, became insane, and was so found by inquisition. A committee was appointed and an action for the administration of the testator's estate was begun in the Chancery Division with the sanction of the Master in Lunacy, by the lunatic and his committee. The personal estate of the testator proving insufficient for payment of his debts, an order was made for the sale of all his realty upon payment into Court of the purchase-money. Under this order the realty was sold, and the purchase-money paid into Court by the purchaser, who, however, raised an objection to the vendor's title, on the ground that they could not convey without an order in lunacy:—*Held,* that the administration action, in which the order for sale had been made, having been properly begun with the sanction of the Master in Lunacy, the lunatic Plaintiff was entitled to carry on the action, and was, therefore, also bound by the order for sale; that the lunatic was, therefore, a trustee within the above-named section, of the realty, and that his committee should be appointed to convey. *Re* STAMPER. STAMPER *v.* STAMPER - - - - **46 L. T. 372**

4. —— *Misrepresentation—Practice—Solicitor Defendant—Right to rescind.*] A sum of £500 stock standing in the names of directors, and which had been made an indemnity to provide against costs in a pending Chancery action, was put up for sale by the owner, an auctioneer, under a particular which stated the above facts, and also that there was a considerable sum applicable for payment of costs, which would be paid thereout; and that the fund of £500 might be looked upon as a secure and sound investment. The fund was purchased by the Plaintiff for £230, and he afterwards found that the whole of it was required to answer the indemnity. The Plaintiff

VENDOR AND PURCHASER—*continued.*

alleged that the Defendant knew at the time that the fund was liable to be wholly swallowed up in costs, and the Court was of opinion that this was the case:—*Held*, that the Defendant could not be heard to say that it was not present to his mind when he put up the property for sale, and that the contract must be rescinded.

A co-Defendant, a solicitor, having taken no part in the misrepresentation, the action was dismissed as against him. Observations on the practice of making solicitors, agents, and arbitrators, Defendants, alleging fraud against the principal Defendant only. MATHIAS *v.* YETTS [46 L. T. 497 (C.A.)

5. —— *Sale under Power by Legal Personal Representative of Mortgagee of Freeholds—Vesting Order—Vendor and Purchaser Act*, 1874 (37 & 38 *Vict. c.* 78), *s.* 4.] The legal personal representative of a deceased mortgagee of realty is not enabled by the above section to convey upon a sale under a power in the mortgage. *Re* WHITE'S MORTGAGE - - - 51 L. J. Ch. 856

6. —— *Title—Waste of a Manor—Contract for Sale of—Non-existence of Commonable Rights over Waste.*] A contract was entered into by the lord of a manor to sell part of the waste, and a statutory declaration was furnished by him that to the best of his information and belief no copyholder or free tenant had exercised any right of common for forty years and upwards, and that he did not know or believe that any copyholder or free tenant existed, and that no quit rents had been paid or services rendered or Court Baron held for forty, or, as the declarant believed, for sixty years and more. The purchaser did not question the vendor's means of knowledge, and the latter offered to add to his declaration a statement negativing the existence of any commonable rights over the waste:—*Held*, that a title which could be enforced upon the purchaser had been shewn. *Re* BRIDGES & MCRAE'S CONTRACT [30 W. R. 539

—— Common mistake—Sale at undervalue.
See MORTGAGE. 9.

—— Contract—Specific performance.
See SPECIFIC PERFORMANCE.

—— Trustee—Purchase by, from *cestui que trust.*
See SETTING ASIDE DEED.

VENUE—Extradition—Fugitive criminal.
See CRIMINAL LAW. 13.

VESTING ORDER—Trustee Acts.
See LUNATIC. 2.

VOLUNTARY CONVEYANCE— *Consideration* — 10 *Car.* 1, *sess.* 2, *c.* 3 (*Ir.*) (*corresponding with* 27 *Eliz. c.* 4)—*Conveyance by Infant—Repudiation.*] The failure by matter *ex post facto* of what was, at the date of a conveyance of land, sufficient to constitute a consideration for it of value, will not operate retrospectively, so as to render the conveyance liable to be defeated under 10 Car. 1, sess. 2, c. 3. by a subsequent conveyance for value of the same land by the same grantor to other uses.

J., who was tenant-in-tail in remainder of the lands of A. in 1840, joined his father T., who

VOLUNTARY CONVEYANCE—*continued.*

was tenant for life in possession, in barring the entail; and in a re-settlement, which included limitations to J. and his issue, T., by the deed of re-settlement, conveyed the lands of B., to which he was absolutely entitled, to the same uses. All the lands were charged by the re-settlement with a jointure for T.'s wife and portions for his younger children and a present rent-charge for J. It was afterwards discovered that J., who was supposed to have attained his majority at the date of the re-settlement, was in fact an infant at the time, but there was no fraud in the transaction.

J., upon this discovery, and within a reasonable time, repudiated the re-settlement; and T. purported, in 1852, to execute a new settlement for valuable consideration, including the lands of B.; —*Held*, that as the re-settlement of 1840 was voidable only by J., and not void as against him until his election to repudiate it, there was a sufficient consideration for that deed in its inception to render the settlement of B. a conveyance for value on the part of T.; and that, as this consideration for value originally existed, 10 Car. 1, sess. 2, c. 3, was inapplicable, and the deed was not avoided by the subsequent settlement of 1852, notwithstanding the failure of the consideration by J.'s repudiation of the deed of 1840. PAGET *v.* PAGET - - - - 9 L. R. Ir. 128

[N.B. The Court of Appeal has reversed the above decision.]

2. —— *Declaration of Trust—Incomplete Gift —Clause of Revocation—Railway Debenture Stock —Transfer—Registration—*8 *Vict. c.* 16, *ss.* 14–20 *—Consideration—Adoption of Infant.*] F., an infant, was adopted by L., a stranger in blood, who promised the parents to provide for the child.

L. by deed, expressed to be made between himself of the one part and T. and J. of the other part, but executed by himself alone, purported, in consideration of natural love and affection towards F., to assign to T. and J. £5000, invested in railway debenture stock, to hold from L.'s death upon trust to apply the income for the education, &c. of F. till he should attain twenty-one, and then upon trust to assign to F. the said sum, with all accumulations thereon.

The deed was not registered as a transfer of the stock, and the stock remained standing in L.'s name till his death. In a suit by L.'s personal representatives for the administration of his estate, and seeking a declaration that the stock which was claimed by T. and J. formed part of it; the Court being of opinion, on the evidence, that there had been no change in the status of F. which would have rendered it inequitable on the part of L., or those claiming under him, to refuse to carry out the provisions of the deed:—*Held*, that the deed as a voluntary instrument could not be deemed operative as a declaration of trust; and that as a gift, it must fail as incomplete, unless T. and J. could compel the Railway Co. to register the deed as a transfer of the stock. pursuant to 8 Vict. c. 16; and the company not being parties to the suit, the Court allowed T. and J. reasonable time to institute proceedings for that purpose, if so advised. WEST *v.* WEST - 9 L. R. Ir. 121

VOTE—County franchise—Rent-charge.
See PARLIAMENT. 2.

W.

WAGES.
See MASTER AND SERVANT. 7, 8.

WAIVER—Award, objection to.
See ARBITRATION. 2.

WARD OF COURT—Removal out of jurisdiction—Parental authority.
See INFANT. 2.

WARRANTY—Auctioneer—Authority to warrant goods entrusted for sale.
See PRINCIPAL AND AGENT. 2.

—— Implied—Accommodation acceptance.
See BILL OF EXCHANGE. 1.

—— Implied, on sale of chattels.
See SALE OF GOODS. 2.

WASTE OF MANOR—Sale of — Commonable rights.
See VENDOR AND PURCHASER. 6.

WATER AND WATERCOURSES—*Private Dam—Right to draw Water from.*] The Plaintiff had erected and for nineteen years maintained mills on the bank of a river, the power being furnished by a dam built by him at the same time across the river. The supply of water was sometimes insufficient to drive the mills. The Defendants then erected waterworks, and supplied them from this dam, by direct pipes and by percolation into adjacent wells, without compensating the Plaintiff:—*Held*, that the Plaintiff was entitled to an injunction. *Chasemore* v. *Richards* (7 H. L. Cas 348) observed upon. CITY OF EMPORIA *v.* SODEN
[37 Amer. R. 265 (U.S.)

2. —— Riparian rights—Diversion of stream to supply locomotives—Injury to lower proprietor—Injunction granted. GARWOOD *v.* N. Y. CENTRAL, &c. RAILROAD CO. 38 Amer. R. 452 (U.S.)

3. —— *Subterranean Channel unknown though defined—Construction of Grant.*] T., who was lessee for lives renewable for ever of a parcel of ground, expressed in his lease to be demised "together with the free use of all springs and streams of water arising in or running through the demised premises or any part thereof, for any bleach-green . . . on the premises," made two subleases to different persons, for lives renewable for ever, of portions of the premises, the first in 1851, and describing the premises therein comprised as "that parcel of ground formerly used as a bleach-green, together with the free use of all waters running in or running through the demised premises . . . . theretofore used for the purposes of linen manufacture . . . . as fully as T. was entitled thereto;" the second in 1853, of the rest of the lands, "together with the free use of all water, if any, arising in or running through the demised premises . . . . as fully as T. was entitled thereto." The interest in both sub-leases, and the equity of redemption in the superior lease (which had been mortgaged) became vested in W., and were eventually sold by auction by the Court of Bankruptcy. The Plaintiff purchased the land comprised in the first sub-lease, and C., under whom the Defendants claimed, the land comprised in the second sub-lease. The conditions of sale provided that each portion of the lands would be sold "subject to existing easements." The Plaintiff

WATER AND WATERCOURSES—*continued.*

was not actually declared the purchaser until a few days after the confirmation of the sale to C. By deed of 15th Mar., 1876, between W.'s assignee and the Plaintiff, reciting (*inter alia*) the superior lease and the sub-leases, the grantors conveyed to the Plaintiff the parcel of land formerly used as a bleach-green, together with the full use of all water rising in or running through the demised premises . . . . as fully as T. was entitled thereto . . . . and all other (if any) the premises comprised in the superior lease "excepting thereout and out of this grant" the premises purchased by C. By deed of 11th April, 1876, between the same grantors and C., and containing similar recitals, the lands comprised in the sub-lease of 1853 were conveyed to C. The testatum made no mention of water rights. In the Plaintiff's land, which was lower than C.'s, a stream issued from the ground at a few feet from the fence between the Plaintiff's and C.'s lands. The Defendants agreed with C. to permit them to bore for water on his lands, made a cutting on them near the fence, and obtained a large supply of water, whereupon the stream on the Plaintiff's land ceased to flow.

The Plaintiff having applied for an injunction to restrain the Defendants from diverting and obstructing the water from his stream:—*Held* (reversing the decision of Chatterton, V.C., 5 L. R. Ir. 536), that (1) the conveyance to the Plaintiff did not grant him the right claimed, and that he would not have been entitled to it even if the conveyance to C. had contained an exception of all existing easements; and (2), although the water flowed subterraneously in a channel which was, and by excavation could have been ascertained to be, defined, the principle of *Chasemore* v. *Richards* (7 H. L. C. 349) applied, as the channel was not known. EWART *v.* BELFAST POOR-LAW GUARDIANS - - - 9 L. R. Ir. 172 (C.A.)

4. —— Surface-water—Drainage of, by municipal corporation on adjoining land—Corporation *held* liable. GILLISON *v.* CITY OF CHARLESTON
[37 Amer. R. 762 (U.S.)

5. —— Surface-water drained into natural watercourse running through Defendant's land—Obstruction of watercourse by Defendant. MCCORMICK *v.* HORAN - - 37 Amer. R. 479 (U.S.)

6. —— Surface-water—Railway Co. not bound to provide for passage of overflow water from river through embankment. CAIRO, &C. RAILROAD CO. *v.* STEVENS - - 38 Amer. R. 139 (U.S.)
See also O'CONNOR *v.* FOND DU LAC, &C. RY. CO., *ib.* 753

WAY—*Grant of, by Deed—"Ingress, egress, and regress."*] Where "liberty of ingress, egress, and regress" is granted, a right of way is thereby given from the *locus a quo* to the *locus ad quem*, and thence to any other spot to which the grantee may lawfully go, or else back to the *locus a quo*.

A close of land was conveyed by a Railway Co., and by the conveyance the grantee had given to him "full and free liberty of ingress, egress, and regress" to and from certain private roads which bounded the close and led to the Co.'s station, and on to the public highways:—*Held*, that the grantee was not limited to passing from the close to the station, or *vice versâ*, but had a right to pass from the close to the private roads, and

WAY—*continued.*

thence to the public highways, or in the opposite direction. SOMERSET *v.* GREAT WESTERN RAILWAY CO. - - - - **46 L. T. 883**

2. —— *Private Right of Way on Foot—Right to carry Burdens—Interference with convenient User of Passage—Obstruction—Questions submitted to Jury—New Trial—Setting aside some of the Findings—Judicature (Ireland) Act, 1877, Sched. Rule* 32.] The Plaintiff was entitled to a right of way on foot through a passage across the Defendants' premises. This passage had been formerly level throughout, with the exception of a three-inch step. The Defendants raised part of the passage, causing an ascent of four, with a descent of three, steps. The Plaintiff brought an action for obstruction to his right of way, and in his claim alleged that his servants used to carry heavy goods through the passage. Evidence was given to shew that the alterations prevented goods from being conveyed by trucks along the passage, and that heavy burdens could only be carried through it at much greater inconvenience than formerly.

The jury found (1) that the passage was made by the alterations substantially less convenient as a mere footway; (2) that it was also less convenient for persons on foot carrying such burdens as might, previously to the alterations, have been carried through it; and (3) that carrying burdens on trucks was a reasonable user of the passage previous to the alterations. On the hearing of the appeal, the Plaintiff admitted that the findings upon other questions left to the jury were immaterial:—*Held*, that the Judge ought to have directed the jury that no right had been shewn to roll trucks or carry burdens not commonly carried by ordinary passengers in the use of the passage; and that the first question alone ought to have been left to the jury; but as that question appeared to have been properly tried, the circumstance that other issues had also been erroneously submitted to the jury did not form any ground for setting aside the verdict for the Plaintiff on the first question, and that the finding on that question and the judgment for the Plaintiff upon it should accordingly stand. Order of the C. P. Division (8 L. R. Ir. 197; 1881 Digest, col. 148) discharged. AUSTIN *v.* SCOTTISH WIDOWS' ASSURANCE SOCIETY - - **8 L. R. Ir. 385 (C.A.)**

3. —— Road, rule of the—Observations on—The proper side on which to pass tramway cars—Contributory negligence. RAMSAY *v.* THOMSON **[9 C. of S. Cas. 140 (Sc.)**

—— Negligence—Grains spilt upon footpath. *See* NEGLIGENCE. 7.

—— Private road—Excavations in—Duty of owner. *See* NEGLIGENCE. 6.

—— Roadway—Undertaking to construct—Paving expenses. *See* ROADWAY.

WILL:—

I. CONSTRUCTION.

II. INVESTMENT CLAUSE.

III. PROBATE.

GENERAL.

I. WILL—CONSTRUCTION—*Advancement, Power of, for "Benefit and Advancement in the World"—Discretion of Trustees—Interference by Court.*] A testator gave to his trustee power to advance the capital of a fund for the "benefit and advancement in the world" of the person entitled to the income of the fund for life, and at the end of the clause conferring the power were words giving the trustee full discretion in exercising the power:—*Held*, that the word "and" in the clause quoted must be read disjunctively, and that the trustee could advance the fund, not merely for the advancement, strictly speaking, of the object of the power, but also for any such purposes as would come within the term "benefit."

The Court will not interfere with the exercise of a trustee's discretionary power, except it be mischievous, ruinous, or fraudulent; and the *onus* of shewing that the power has been so exercised rests on those who impeach the trustee's proceedings. *Re* BRITTLEBANK. COATES *v.* BRITTLEBANK - - - - - **30 W. R. 99**

2. —— *Appointment of "Executors and Trustees of this my Will"—Undisposed of Residue—Executors not entitled to take beneficially*—11 *Geo.* 4 *&* 1 *Wm.* 4, *c.* 40.] The appointment of an executor vests in him all the personal estate of the testator; and if any part (after payment of the funeral expenses and debts) remain undisposed of by the will, it vests in the executor beneficially; but wherever it appears on the face of the will that the testator did not intend the executors to take the surplus, they are deemed trustees for those on whom the law would cast the surplus in case of a complete intestacy; and this is so, whether the executors are expressly called executors *in trust*, or any other expressions occur shewing the office only to be intended for them and not the beneficial interest. A testator, after giving a number of pecuniary legacies, some of which involved the performance of active trusts on the part of his "executors," appointed A., B., and C. "executors of this my will." The will contained a clause providing for abatement of the legacies in case of a deficiency, and no residuary gift; but on the testator's death there was a considerable surplus:—*Held* (by Sullivan, M.R., and by the Court of Appeal, affirming his decision), that the executors were not beneficially entitled to the undisposed of residue.

Observations of Malins, V.C., in *Roose* v. *Chalk* (49 L. J. Ch. 625) upon *Braddon* v. *Farrand* (1 Russ. 87) commented on. DILLON *v.* REILLY **[9 L. R. Ir. 57 (C.A.)**

3. —— *Charitable Bequest—Gift of Annual sum to Officiating Chaplain and his Successors.*] A testatrix, by a codicil to her will, bequeathed to the Defendants £500 for the R. Chapel, upon trust to pay the annual income thereof to the chaplain of the R. Chapel at the time of her decease during his life, and to his successors in said chaplaincy.

By a second codicil she made the following bequest:—"I bequeath to .... G., Chaplain of the R. Hospital, the sum of £300 for his own personal use, and over and above and independent of the bequest made by a former codicil in favour of the chaplain of the said hospital."

At the dates of these codicils and at the death

I. WILL—CONSTRUCTION—*continued.*

of the testatrix, G. was chaplain to the R. Chapel, attached to the R. Hospital, but he shortly afterwards resigned his chaplaincy:—*Held*, that the £500 legacy for the R. Chapel was intended by the testatrix as an endowment for the chapel, and not as a gift for the personal benefit of the clergyman who filled the office of chaplain at her death; and that, therefore, the income of the legacy was payable to G. so long only as he continued in the office of chaplain, and ceased to be payable to him upon his resignation. GIBSON *v.* REPRESENTATIVE CHURCH BODY - - 9 L. R. Ir. 1

4. —— *Charity—Devise to A., or other the Bishop of B. "for the time being, in trust for the Sisters of Mercy at B."—Voluntary Society for Charitable Purposes.*] A testator devised freehold lands "to the use of D., Bishop of C., or other the Bishop of C. for the time being, in trust for the Sisters of Mercy at B." He then left part of the residue of his property upon trust to pay to the said "D. Bishop of C., or other the Bishop of C. for the time being, ... £1000, which I direct forthwith to be applied by him for the benefit of the Convent of Mercy at B. ... the good sisters of which are requested to apply the same in and to such charitable purposes as they deem most useful." By a codicil the testator bequeathed "to the priest who shall be Abbot of M. ... at the time of my death; £50."

At the time of the testator's death the Sisters of Mercy at B. numbered about ten, and the objects of the sisterhood were essentially charitable:—*Held*, by Ormsby, J., and by the Court of Appeal, that the trust of the lands in favour of the sisters was valid, as one simply for the individual ladies who at the testator's death were Sisters of Mercy at B.

Per Law, C.:—The words "for the time being" were, though perhaps inaccurately, used by the testator as pointing merely to the time of his death; but even if those words involved the creation of a perpetuity, the gift could be upheld as charitable, on the authority of *Cocks* v. *Manners* (L. R. 12 Eq. 574), inasmuch as, though no charitable purpose was stated in connection with the devise, it was a gift to a voluntary society existing for charitable purposes. *In re* DELANY'S ESTATE - - - 9 L. R. Ir. 226 (C.A.)

5. —— *Class—Gift to Class "from S. downwards."*] N., by her will, gave her residuary estate to be divided amongst the family of R. T., "from Sophia, my cousin, downwards:"—*Held*, that Sophia was included in the gift. LETT *v.* OSBORNE - - 51 L. J. Ch. 910; 47 L. T. 40

6. —— *Class—"Survive."*] A testatrix bequeathed two sums of money upon trust respectively for her nieces M. and E. The legacy given to E. was bequeathed upon trust for E for life for her separate use, and after her decease for her children, if any, living at her death, as she should appoint; and in default of appointment equally amongst them, or if but one child, the whole to be in trust for such only child. The legacy to M. was bequeathed upon similar trusts; and the testatrix directed that in case her said nieces, or either of them, should die without leaving issue, the legacy of the niece so dying should be equally divided between "the children of whichever of my said nieces shall happen to survive," and the children of C. in equal shares, on attaining twenty-one years, or day of marriage; and if only one such child then living, the whole should go to such only child. There was no gift over of the whole fund, in the event of there being no children to take it. M. died in 1877. E. died in 1881 without issue, and at the time of her death there were living children of M. and children of C.:—*Held* (by Law, C., and Deasy, L.J., *diss.* FitzGibbon, L.J.), affirming the decision of Chatterton, V.C., that C.'s children were entitled to the entire legacy so bequeathed to E., to the exclusion of the children of M.; for the words "whichever of my said nieces shall happen to survive" should not be construed as equivalent to "the other," but must receive their literal meaning:—*Held*, by FitzGibbon, L.J., the intention of the testatrix was to provide in the alternative, for the event (which happened) of only one niece dying without issue, and that the words above quoted had reference to the other niece not so dying; a clue to the interpretation of the bequest being furnished by its containing in effect a gift over in the event of both nieces dying without issue surviving. *In re* DUNLEVY'S TRUSTS [7 L. R. Ir. 525; 9 L. R. Ir. 349 (C.A.)

7. —— *Codicil—Charge by Will on Realty of Legacies "hereinafter bequeathed"—Legacies in subsequent Codicil.*] A testator directed that the rents of his realty till sale, and after sale the interest of the proceeds, should be applied in payment of so much of the "legacies hereinafter bequeathed" as his personalty should be insufficient to pay, and by his will bequeathed certain pecuniary legacies, and by a subsequent codicil other legacies:—*Held*, that the charge was confined to the legacies bequeathed by the will. GILLOOLY *v.* PLUNKETT - - 9 L. R. Ir. 324

8. —— *Contingency—Life Estate—Gift over—"Dying within twelve months" from Testator's Decease—Death in Testator's Lifetime.*] D. gave, by his will, his residuary estate upon trust for his wife for life, providing she should survive him twelve months and remain unmarried. He also gave to her power to dispose by will of half of the estate, and gave the other half, on her death, to J., his sister, or, in case of her predecease, to others, and he directed that, in case his wife died within twelve months of his own death, his whole estate should go to his said sister, with a gift over as before in case of her predecease, and he made a similar provision respecting one half the estate in case no will was made by his wife. The wife of the testator died before him, but his sister J. survived him:—*Held*, that, in the events which happened, the gift over in favour of J. took effect; since the contingencies against which the testator had guarded, and which the Court, in construing the will, was bound to regard, were the event of his wife not being alive at the end of twelve months from his own death, and the event of her having made no will. DAVIES *v.* DAVIES [47 L. T. 40; 30 W. R. 918

9. —— *Conversion of Personalty into Realty—Implied Trust—Option of Trustees to invest in Realty.*] Where a testator leaves to his trustees personalty, with limitations applicable to realty only, and it appears from the whole tenor of the

I. WILL—CONSTRUCTION—*continued.*

will that the personalty is to pass as realty, a trust may be implied to invest such personalty in the purchase of realty; but a mere gift of personalty with limitations appropriate to realty, a great part of which must necessarily fail as applied to personalty, will not create an implied trust for the conversion of the personalty.

A testator left his residuary personal estate to trustees with an option to invest a portion thereof in purchasing either real estate or personal securities, and directed that the personalty, as well as any land purchased, should be subject to certain limitations expressed in the will which could have no effect in the case of personalty:—*Held*, (affirming the judgment of the Court of Appeal), that this did not necessarily lead to the inference that it was not the testator's intention to give the trustees an option to invest permanently in personal securities.

Earlom v. *Saunders* (Amb. 241) and *Cowley* v. *Hartstonge* (1 Dow. 361) distinguished. EVANS *v.* BALL - **47 L. T. 165; 30 W. R. 899 (H.L.)**

10. —— *Direction to carry on Trade—Renunciation by Executors—Limited Beneficial Interest of Administratrix—Property, how far dedicated to Trade Purposes—Mortgage to secure Trade Debts.*] A testator bequeathed the residue of his property to his executors, in trust to permit his wife M. to retain possession of his business premises and the stock-in-trade, &c., therein, and to occupy the houses and carry on the business there until his son J. (the Plaintiff) should attain 21 or marry, for her own use and benefit, subject to the maintenance of J. The executors were directed to hand over to M. any other property of the testator, to enable her to carry on the business. The testator then bequeathed all the residue to J. on his attaining twenty-one, or marriage. The testator's premises were held for a term of years, and formed part of the residue. The executors renounced probate, and administration with the will annexed was granted to M., who carried on the business, and married a second time with K. K. and M. deposited with the Defendants the lease of the premises, and executed an equitable mortgage thereof, to secure a debt contracted by M. in the course of the trading, and also future advances, to a specified limit:—*Held*, (1) that the trade having been carried on by M., not in any fiduciary capacity, but for her own benefit under the will, she had not power as against J. to mortgage the property for the purpose of such trading; (2) that, upon the construction of the will, the testator's property in the house was not intended to be sold or mortgaged by the executors for trade purposes, and that therefore the equitable mortgage, even treated as a charge created by M. as personal representative, would be invalid against J. after his attaining twenty-one; and J., having attained that age, was therefore entitled to recover the lease from the Defendants. BOYLAN *v.* FAY - - - **8 L. R. Ir. 374**

11. —— *Direction to Trustees to permit Testator's Wife to carry on his Trade—Divesting Clause on Second Marriage—Debt due at Testator's Death—Trading carried on with Widow—Appropriation of Payments—Liability of Assets for Goods supplied to carry on Trade.*] P. S., by his will, bequeathed to his two sisters, whom he appointed as the executrices of his will, his house, together with all the stock-in-trade, household furniture, and all his other property, upon trust to permit his wife D. M. S., so long as she should remain a widow, to reside with his children in the said house, and to carry on the business of a grocer and spirit dealer therein for the benefit, support, and maintenance of herself and of her children during her life; but the testator directed, if his widow should marry again, she was to cease to reside in the said house, or to have any interest in or control over it, the stock-in-trade, or furniture, and that the same should be held by his trustees for the exclusive benefit of his children. And in case his widow should marry again, the testator empowered his trustees either to continue the business, as theretofore carried on in the said house, or to sell it; and he empowered them, in case his wife should marry again, to raise the sum of £400, by mortgage of the house or otherwise, and hand the same to his wife. The testator died in 1877, and his will was proved by one of his executrices, the Plaintiff in the action. During his life the testator had carried on the trade of a grocer and spirit dealer in the house mentioned in his will. From the date of his death, his widow continued to reside there with her children, and to carry on the business up to the time of her death, which occurred in August, 1879. She had married again in February, 1879. The business had been carried on with the consent of the acting executrix till the second marriage, when such consent was withdrawn.

At the date of the testator's death he was indebted to the firm of D. & Son in the sum of £153, and the firm continued supplying his widow with goods for the purpose of the trade up to March, 1879, when she owed the firm £168. She had, during the course of her trading, paid the firm more than sufficient to pay the sum due to them at the testator's death. The account of the testator in the books of the firm was continued without a break, except that the heading of such account was changed, at first to "Representatives of late Mr. P. S.," and, after a while, to "Mrs. S.," and the balance due at the testator's death was carried on to the debit of the next account, and the payments credited against it; and the account was so kept till the dealing ceased. Monthly accounts, kept in a similar way, were from time to time furnished by D. & Son to Mrs. S. D. & Son, having brought in a claim against the testator's assets for the balance due at the date of the testator's death:—*Held*, that the payments made by the widow to the firm had been conclusively appropriated to the discharge of the debt due at the testator's death, and the claim was, therefore, disallowed

D. & Son afterwards brought in a claim for £168; for goods supplied to D. M. S., for the purpose of the trading carried on by her in the testator's house, pursuant to the directions in the will. Another creditor, R. B., brought in a similar claim for the price of goods supplied to D. M. S., from the date of the testator's death to that of her own. The executrix had, shortly before D. M. S.'s second marriage, warned R. B. not to supply her with any more goods, and informed him that if

I. WILL—CONSTRUCTION—*continued.*

D. M. S. married again she was to cease to have any control over the business:—*Held*, that the trust to permit the testator's wife to carry on the business was equivalent to a direction to the trustees to carry it on themselves with the property which was employed by the testator himself in the trade, and that the assets to the extent of such property were liable to pay for goods supplied to the testator's widow for the trade so carried on by her with the executrix's consent:—*Held*, however, that as the claimants' right to be repaid out of the assets depended on the direction in the testator's will to carry on the trade, they were bound to take notice of the divesting clause on the second marriage of his widow; and that, so far as the claims were for goods supplied after such second marriage, they should be disallowed. GALLAGHER *v.* FERRIS - - 7 L. R. Ir. 489

12. —— *Joint Tenancy.*] A testator, after reciting that he was part proprietor with another of the S. Hotel, owned by them in equal shares, directed that his interest therein "shall be vested, and become the property of my present wife M., for her own benefit, and for the benefit of my two sons . . . C. and E.; and my further wish . . . is, that said M. shall, in the event of my decease, continue to carry on the business of the S. Hotel until C. and E. shall attain the respective ages of twenty-one years: at which periods respectively it is my wish . . . that my said wife M. shall make over one-third of such interest in the S. Hotel to C. and E., for their own sole and separate use and benefit." He bequeathed another hotel to two other sons, "in equal shares and proportions, share and share alike." E. died a minor. In an action by E.'s administrator, claiming his share in the S. Hotel:—*Held*, that on E.'s death under twenty-one, M. and C. became entitled, by survivorship, to E.'s share. JURY *v.* JURY [9 L. R. Ir. 207

13. —— *Legacy—Condition — Testator's Intention.*] A testator bequeathed £1000 to A., conditioned upon her "declaring in writing that she shall not renew her engagement of marriage with J." His trustees refused to pay the legacy without the further statement being added that no engagement subsisted between A. and J. at the date of the declaration:—*Held*, that the trustees were entitled to have the declaration expressed in such terms as would best carry out the testator's intention, and that A. was not entitled to insist upon its being in the precise terms of the will. FORBES *v.* FORBES' TRUSTEES 9 C. of S. Cas. 675 [(Sc.)

14. —— *Legacy — Cumulative or Subsitutional.*] When a testator bequeaths the same sums in two separate testamentary writings to the same legatees the legacies must be regarded as cumulative unless there is something to shew that a different construction is necessary, and that the later legacies were substitutional.

A testator, in February, 1880, executed a codicil, bequeathing legacies to certain charities and individuals. In April, 1880, he executed another codicil in similar terms, bequeathing legacies of exactly the same amounts to the same charities and persons, with one exception, a legacy of £10 to one of the individuals being doubled. There were also legacies to two charities and two persons not named in the prior codicil. After the testator's death the second codicil was found in an envelope along with other testamentary writings, but the first was found in the folds of a title-deed having no relation to his testamentary affairs. All the documents were found in the same box:—*Held*, that as there was nothing to indicate that the bequests in the second codicil were to be construed as substitutional, they must be regarded as cumulative. ROYAL INFIRMARY OF EDINBURGH *v.* MUIR'S TRUSTEES - - - 9 C. of S. Cas. 352 (Sc.)

15. —— *Legacy, Double—Cumulative or substitutional.*] A testator left two testamentary writings dated within six months of each other. By the earlier he bequeathed £4000 to a trustee for a natural son A., the sum to be paid to A. on his attaining twenty-five; and on his death before twenty-five, the £4000 was to be divided equally amongst the testator's unmarried female cousins. By the later writing £6000 was left to three trustees—of whom the trustee named in the earlier writing was one—for A. the sum to be paid to A. on his attaining twenty-four, and on his death before twenty-four, the £6000 was to be divided equally as before, except that £1000 was to go to a married cousin named:—*Held*, that the provision of £6000 was substitutional, and not cumulative. ARRES' TRUSTEES *v.* MATHER [9 C. of S. Cas. 107 (Sc.)

16. —— *Legacy*—Pari passu *ranking—Demonstrative Legacy.*] A testatrix, after making several bequests in her will and codicils, executed another codicil in 1877, whereby she directed her trustee, "after paying and making provision for the whole legacies" in the will and "codicils thereto executed by me prior to the date hereof, to set apart and invest from the free residue thereafter remaining" £1000 for a legatee named. By subsequent codicils she left additional legacies to legatees named in her codicils prior to 1877. The estate having proved insufficient to pay all the legacies:—*Held* (1), that the £1000 legacy was not to be paid out of the said free residue preferably to subsequent legacies; and (2) that it was not postponed to subsequent legacies, but was to be ranked *pari passu* with them. CHIVAS' TRUSTEE *v.* M'LEOD - - 9 C. of S. Cas. 86 (Sc.)

17. —— *Legacy, pecuniary, to Married Woman—Separate Use—Restraint on Anticipation or Alienation—Bequest of Leaseholds "Free of all outgoings and payments"—Annuity, Life or Perpetual.*] J. T., by his will made a bequest of £20,000, after the death of R. S., to the child or children of R. S. who should survive him, the testator, equally to be divided between them if more than one. R. S. died during the lifetime of the testator, and left two daughters, of whom one was married.

There was a proviso in the will that every bequest thereby made for any female during her coverture should be "for her separate use and without power of anticipation or alienation." There was no clause declaring that the receipt of a married woman should be a sufficient discharge:—*Held*, that, notwithstanding the proviso, the married daughter of R. S. was entitled to have

I. WILL—CONSTRUCTION—*continued.*

her moiety of the £20,000 paid to her on her separate receipt.

The will bequeathed to W. a leasehold messuage, "free of all outgoings and payments, except the annual and other rent." The will provided that all bequests, whether of legacies or annuities, should be paid free from legacy duty:—*Held*, that the bequest to W. was free from legacy duty, but was subject to the covenants and liabilities under the lease.

The trustees of the will were directed to appropriate and invest, in their own names, a sufficient portion of the testator's estate to pay, among other annuities, one of £500 per annum to W.:—*Held*, that such annuity was for W.'s life only, as no particular portion of the testator's property was specified for the purpose of answering annuities. *Re* TABER. ARNOLD *v.* KAYESS - **46 L. T. 805; [30 W. R. 883**

18. —— *Misdescription of Legatees—Parol Evidence to correct—Latent Ambiguity.*] Bequest to "the two daughters of Sergeant-Major Gill, late of the 2nd Dragoon Guards, and who was lately stationed at N. Barracks, and who is married to my cousin M. A. M., the sum of £400, to be equally divided between them." M. A. M. was not cousin to the testatrix. She was the stepdaughter of the testatrix's father; but they had been brought up together, and called each other sometimes cousins, sometimes sisters. M. A. M. was married to Sergeant Simons, by whom she had two daughters—Raynah, married to Sergeant-Major Gill, 3rd Dragoon Guards (which regiment had been stationed at N. Barracks shortly before the date of the will), and who had one daughter, an infant; and Rachael, married to Adams:—*Held*, on the evidence of statements made by the testatrix with reference to herself, M. A. M., and her husband's name, that the testatrix, when making her will, had mistaken the name "Gill" for "Simons," and that Raynah and Rachael, the daughters of M. A. M., were entitled to the legacy. BAXTER *v.* MORGAN - **7 L. R. Ir. 501**

19. —— *Misrecital of Will in Codicil—Inconsistent Dispositions.*] Where a codicil merely misrecites a will, the dispositions of the will are not modified by such misrecital; but an erroneous recital of a will, coupled with or succeeded by a clear indication of the testator's intention to make some modified or different disposition, inconsistent with those of the will, is operative to modify or alter the dispositions of the will.

J. M. by his will gave to his daughter (in the events which happened) an estate tail in his realty, and an absolute estate in his personalty. By a codicil, after reciting that his daughter would take a life estate in his property, with remainder to her issue, he directed that the life estate should be for her separate use, that she should have a power of appointing a life estate to any husband who should survive her, and that if she should have more than one son, and her eldest son should inherit property of a certain value from other sources, then her second son should succeed to the property given by the will, with certain gifts over:—*Held*, that the codicil modified the estates given by the will, and that the daughter was entitled to a life estate only in the testator's

I. WILL—CONSTRUCTION—*continued.*

realty and personalty, with remainder by implication to her eldest son absolutely, subject to her appointing a life estate to a husband, and to a shifting use in favour of a second son. *Re* MARGITSON. HAGGARD *v.* HAGGARD **46 L. T. 807; [30 W. R. 920**

20. —— *Mistake in Name of Legatee—Parol Evidence.*] Administration granted to Andrew Carroll of R., as universal legatee, although named in the will "Matthew Carroll of R.," on satisfactory evidence of the mistake, and that there was no such person as "Matthew Carroll" living at R. *In re* MURPHY - **7 L. R. Ir. 561**

21. —— Mortgage *held* not authorized by power to "sell and dispose of" estate. STOKES *v.* PAYNE - - **38 Amer. R. 340 (U.S.)**

22. —— *Parcels—"Appurtenances."*] C., a testator, devised all his freehold and copyhold hereditaments to trustees upon trust for his wife for life or widowhood, and after her decease or second marriage, "then, as to all that my corn windmill, messuage, or dwelling-house, with the stable, outbuildings, yards, gardens, and appurtenances thereto adjoining and belonging . . . . and which I purchased of D. . . . upon trust for . . . . my son W., his heirs and assigns."

The land which C. had purchased of D. was a plot of about five acres of meadow, the mill, house, and gardens occupying about an acre thereof, and not being completely fenced off from the rest of the land. At the date of the will and of C.'s death, W. occupied the mill and part of the land as C.'s tenant, C. himself occupying the rest:—*Held*, that though the word "appurtenances" does not properly include land where the principal subject of gift is land or a messuage, still, upon the construction of the whole will, and taking the circumstances into consideration, the four acres of meadow occupied with the house passed under the word "appurtenances." CUTHBERT *v.* ROBINSON **51 L. J. Ch. 238; 46 L. T. 57; [30 W. R. 366**

23. —— *Power coupled with a Trust.*] A testator devised a farm, with all the stock, &c., share and share alike, to his son and his daughter; and, after some bequests to them, he declared that the bequests to his daughter should be for her own sole and separate use, to be held by her for her life, with a power of appointing same amongst her children:—*Held*, that the power to the daughter was coupled with a trust for her children, and that she took only a life interest in a moiety of the property.—*Healy* v. *Donnery* (3 Ir. C. L. R. 213) considered and distinguished. AHEARNE *v.* AHEARNE - - **9 L. R. Ir. 144**

24. —— *Power to lease to "Person or Persons"—Company.*] A testator devised realty to trustees, with power to lease it to "any person or persons" they should think fit:—*Held*, that they were authorized to grant a lease to a limited company. *Re* JEFFCOCK'S TRUSTS **51 L. J. Ch. 507**

25. —— *Recitals—Description of Property—Locke King's Act*—17 & 18 *Vict. c.* 113, *s.* 1; 30 & 31 *Vict. c.* 69, *s.* 1; 40 & 41 *Vict. c.* 34—*Policy of Insurance*—"*Residue*"—*Contrary Intention.*] A testator, who was entitled to both freeholds and leaseholds in Dublin, after reciting that he was

I. WILL—CONSTRUCTION—*continued.*

"possessed of certain property in Dublin for the residue of certain terms of years,' bequeathed his "said Dublin property":—*Held*, that only the leaseholds passed under this gift.

The testator directed that, after payment of an annuity, the rents of his Dublin property (which was held to mean his chattels real in Dublin) should be applied in providing a fund for the payment of all charges affecting his Dublin property at his decease, and that if the fund so provided should be insufficient, his said Dublin property should be charged with the payment of the balance. Two mortgages had been granted by the testator, one of which included fee simple property and chattels real of the testator at Dublin, and personal estate, part of which was specifically bequeathed; the second affected the same property, except part of the fee simple property:—*Held*, that the Dublin chattel property was made by the will a primary fund for payment of the mortgages, but that after its exhaustion the deficiency should be apportioned among the remaining subjects of the mortgage.

The testator, after reciting that he was entitled to an insurance policy on his life for £2000, bequeathed £400, part thereof, to E., and two sums of £100 each, parts thereof, to C. and J., and left "the residue" to H. When the testator died certain sums by way of bonus were added to the policy:—*Held*, that H. took the entire residue of the proceeds of the policy, including the bonuses, but subject to any liabilities for the satisfaction of which the policy was liable to be resorted to, and that such liabilities were to be borne primarily by H., in exoneration of the specific legatees.

The testator, after reciting that he was entitled to a sum standing in Court to the credit of a certain cause, subject to the life estate therein of E., bequeathed his interest therein upon certain trusts. He was entitled to an expectant interest in a sum of £3000 stock, standing to the credit of the cause, and retained to answer an annuity of £105 to E. for life. The residue of the funds to the credit of the cause, including other sums to which the testator was entitled, were liable to make up any deficiency of the £3000 stock in payment of the annuity, but E. was not otherwise interested therein:—*Held*, that under the above bequest the interest of the testator in the £3000 only passed. CORBALLIS *v.* CORBALLIS **9 L. R. Ir.** [309

26. —— *Residuary Gift—Direction to transfer Business—Freehold Business House.*] W. H. by his will devised and bequeathed all his property to trustees upon trust to invest such part as they should think fit in his business, and carry on the same till his son should attain twenty-one, and out of the profits to pay his widow the yearly sum of £200 so long as she should remain a widow; and he directed the trustees, when his son should attain twenty-one, to transfer the business to the son. He then gave certain legacies to his other children, and provided that all his personalty not required for the business should be continued in its then state of investment or altered at the discretion of the trustees, and the proceeds applied for the same purposes as the capital employed in the business. The business was carried on in a freehold shop:—*Held* (1), that the direction to transfer the business did not pass the freehold shop, and (2) that the residuary gift carried the surplus profits of the business during the son's minority. *Re* HENTON. HENTON *v.* HENTON [**30 W. R. 702**

27. —— *Substitutional Gift to Issue—Parent dead at Date of Will.*] A testator gave his residuary estate to trustees on trust for his sister for life, and, after her death, to pay the principal to the child or children of his sister equally at twenty-one, "and if any of them die leaving issue, the share or shares of such of them as shall so die shall go to their respective issue *per stirpes* and equally amongst such issue if more than one; and if any of the children of my said sister shall die under the age of twenty-one years, without leaving issue, the share or shares of such of them as shall die as last aforesaid shall lapse." The testator died in 1861; his sister in 1881, she having had three children, of whom two were, at the date of the will, dead, one leaving issue, and the other without issue:—*Held*, that the gift to the issue of deceased children of the testator's sister was substitutional, and that the issue of the child dead at the date of the will were not entitled under it.

Christopherson v. *Naylor* (1 Mer. 320) followed. *Re* BARKER. ASQUITH *v.* SAVILLE [**51 L. J. Ch. 835; 47 L. T. 38**

28. —— *Trust for Missionary Purposes—Trust void for Uncertainty—Secret Trust.*] A testator left the residue of his property to A. and B., "upon and for certain trusts and purposes which he had fully explained to them," and named A. and C. executors. Enclosed in an envelope with the will was found a letter by the testator, of the same date, and addressed to A. and B., directing them to apply the money left to them from time to time "for such missionary purposes in Ireland as they should, in their discretion, think fit." The will was admitted to probate, but the letter was rejected. The testator had never spoken to A. of any trust, but had, after the date of the will, told B. that he had left the property to him and A., and asked B. if he thought he could work with A.; and B. replied that he could under certain conditions. This conversation was never communicated to A.:—*Held*: (1) That a trust for "missionary purposes" was void, as too vague and uncertain. (2) That the letter was inadmissible to prove the trust. (3) That there was no acceptance of the trust by A.

Riordan v. *Banon* (Ir. R. 10 Eq. 469) and *Re Fleetwood* (15 Ch. D. 594) observed upon. SCOTT *v.* BROWNRIGG - - - [**9 L. R. Ir. 246**

29. —— Trust, precatory—Gift to wife, "requesting her, at the close of her life, to make such disposition of the same among my children . . . . as shall seem to her good:"—Gift *held* absolute. FOOSE *v.* WHITMORE - **37 Amer. R. 572** (U.S.)

30. —— *Vesting—Time of—Annuity charged on Real and Personal Estate—Pecuniary Legacy—Direction that Gift shall not become payable or "vest" until specified Age—Power of Maintenance and Advancement at Discretion of Trustees.*] A. devised and bequeathed freeholds and leaseholds upon trust to pay two annuities to J., to whom he also bequeathed a legacy, payable out of

I. WILL—CONSTRUCTION—*continued.*

his personalty, and, by a subsequent clause, directed that the annuities and legacy should not become payable or vest until J. attained twenty-five years; nor then, unless he should have conducted himself to the satisfaction of the trustees of the will, who were empowered in the meantime to make advances for J.'s maintenance and education as they might think fit; and the testator directed that, in the event of J.'s misconduct, or not continuing to be a Protestant, the annuities and legacy, or such portion thereof as should remain undisposed of, and save such portion as should be necessary for his actual support, should go over upon certain charitable trusts. A. also directed that J. should not have power to dispose of or incumber the bequests or legacy until he should have attained twenty-five, and have become otherwise entitled to them as aforesaid. J. survived A., attained twenty-one, but died under twenty-five:—*Held*, that the word "vest" must be interpreted in its primary meaning, and could not be construed as referring merely to the time of payment; and that the gifts of the legacy and the annuities, even so far as they were payable out of personalty, were contingent on J.'s attaining twenty-five. CREETH *v.* WILSON 9 L. R. Ir. 216

—— Charitable bequest.
See CHARITY.

—— Doubts as to—Administration action by trustee.
See EXECUTOR—ACTIONS. 1.

—— Power—Exercise of—Deviations from power.
See POWER OF APPOINTMENT. 4.

—— Power given to survivor of two life-tenants.
See POWER OF APPOINTMENT. 5.

II. WILL—INVESTMENT CLAUSE—*Railway Co. in India—Guaranteed Railway Stock—Leasehold Railway—East Indian Ry. Co. Purchase Act*, 1879 (42 & 43 *Vict. c. ccvi.*), *s.* 37.] The trustees of a will had power given to them by the testator to invest in (*inter alia*) "the debentures or the debenture guaranteed, or preference stock or shares of any Railway Co. in . . . India, upon which a fixed or minimum rate of interest should be secured or guaranteed by the same or any other company, or by the Government of India." Upon the request of the tenant for life of a part of the estate, the Court ordered her share to be invested in East India Railway Stock, Annuity B., and Scinde, Punjaub, and Delhi Railway 5 per cent. Guaranteed Stock. *Re* MANSEL. RHODES *v.* JENKIN - - 46 L. T. 741; 30 W. R. 133

III. WILL—PROBATE—*Acknowledgment.*] A., the testator, signed a will prepared at his request by B., the sole executor, and then sent for C. and D. to attest it. B., in the presence and hearing of A., asked C. and D. to attest the will, and they did so. A. said nothing till they had signed, when he thanked them for their trouble:—*Held*, a sufficient acknowledgment of A.'s signature. *Inglesant* v. *Inglesant* (L. R. 3 P. & D. 172) followed. IN THE GOODS OF BISHOP 30 W. R. 567; [46 J. P. 392

2. —— *Jurisdiction—No Assets within—Funds in Hands of Secretary of State for War—Regimental Debts Act* (26 & 27 *Vict. c.* 57.)] The foundation of the jurisdiction of the Court of Probate is, that there are assets of the deceased to be distributed within its jurisdiction. Therefore the Court in Ireland refused to grant administration to an officer whose domicil was in Ireland, but who died in India, and whose only assets were some property in India and a sum of money in the hands of the Secretary of State for War. *In the Goods of Roche* (7 Jur. N. S. 784) observed on. *In re* BUTSON - 9 L. R. Ir. 21

III. WILL—PROBATE—*continued.*

3. —— *Proof in Colonial Court—Application to admit to Probate in Ireland—Secondary Evidence of Will—Copy produced to Attesting Witness resident out of Jurisdiction of Colonial and Irish Courts.*] A will made and attested in Queensland was proved and lodged in the Supreme Court of New South Wales, at Sydney. The executor having applied for probate in Ireland, upon the evidence of one of the attesting witnesses (to whom a copy only of the will had been exhibited) of its due execution, and upon an affidavit of a solicitor and officer of the Court at Sydney that they had inspected the will there, and had set out a true copy of it in the affidavit, and proving the handwriting of the signatures of the testator and attesting witnesses, there being no suspicious circumstances attached to the will:—*Held*, by Warren, J., and by the Court of Appeal, that probate should be granted; it being assumed, in the absence of contrary evidence, that Queensland was outside the jurisdiction of the Courts of New South Wales.—*Held*, also, that when attesting witnesses are out of the jurisdiction, a will may be proved by evidence of their handwriting, albeit the will might possibly have been sent to the witnesses. WILSON *v.* COLLUM 9 L. R. Ir. 150 (C. A.)

WILL—Charge of annuity on realty—Sale by order of Court.
See CONVEYANCING ACT. 2.

—— Evidence—Australian will.
See EVIDENCE. 11.

—— Exercise of power by.
See POWER OF APPOINTMENT. 4, 5.

WINDING-UP.
See COMPANY—WINDING-UP.

WINDOWS—Alteration of position of.
See LIGHT AND AIR. 2.

WITNESS—Criminal trial—Postponement—Infection.
See CRIMINAL LAW. 20.

—— Privilege of—Immunity from process.
See CONTEMPT OF COURT. 2.

WORDS—"And."
See WILL—CONSTRUCTION. 1.

—— "Appurtenances."
See WILL—CONSTRUCTION. 22.

—— "Become payable."
See WILL—CONSTRUCTION. 30.

—— "Beginning of adventure."
See INSURANCE—MARINE. 1.

—— "Catching fish."
See FISHERY. 1.

—— "Clerk."
See REVENUE. 1.

WORDS—*continued.*
—— "Close-hauled."
See SHIP. 8.
—— "Conduct injurious to character and interests of club."
See CLUB.
—— "Conduct of suit."
See COUNTY COURT. 1.
—— "Contract."
See CHURCH RATES. 1.
—— "Dying within twelve months."
See WILL—CONSTRUCTION. 8.
—— "Extorsively."
See CRIMINAL LAW. 12.
—— "Forthwith."
See BANKRUPTCY—APPEAL. 1, 2.
—— "Free of all outgoings and payments."
See WILL—CONSTRUCTION. 17.
—— "From S. downwards."
See WILL—CONSTRUCTION. 5.
—— "Game, sport, pastime, or exercise."
See CRIMINAL LAW. 15.
—— "Goods."
See CARRIER—GOODS. 3.
—— "Goodwill."
See GOODWILL.
—— "Growing crops."
See BILL OF SALE. 1.
—— "Hereinafter bequeathed."
See WILL—CONSTRUCTION. 7.
—— "House."
See LANDS CLAUSES ACT. 2.
—— "Ingress, egress, and regress."
See WAY. 1.
—— "Lodger."
See LANDLORD AND TENANT. 6.
—— "Missionary purposes."
See WILL—CONSTRUCTION. 28.
—— "Moderate speed."
See SHIP. 5.
—— "Net profits."
See COMPANY—ARTICLES. 1.

WORDS—*continued.*
—— "Ordering traffic."
See HIGHWAY. 4.
—— "Other."
See WILL—CONSTRUCTION. 6.
—— "Owner."
See ARTIZANS' DWELLINGS ACT.
—— "Person or persons."
See WILL—CONSTRUCTION. 24.
—— "Persons absolutely entitled."
See LANDS CLAUSES ACT. 6.
—— "Profits."
See REVENUE. 1.
—— "Regular clergyman."
See COVENANT. 1.
—— "Residue."
See WILL—CONSTRUCTION. 25.
—— "Running free."
See SHIP. 8.
—— "Scotch iron of best quality."
See CONTRACT. 8.
—— "Sell and dispose of."
See WILL—CONSTRUCTION. 21.
—— "Servant or other person."
See REVENUE. 4, 5.
—— "Survive."
See WILL—CONSTRUCTION. 6.
—— "Tributary."
See FISHERY. 2.
—— "Value."
See CARRIER—GOODS. 2.
—— "Vest."
See WILL—CONSTRUCTION. 30.
—— "Wind aft."
See SHIP. 8.
—— "Yard."
See DEED. 1.

WRIT—*Elegit*—Costs of, and inquisition.
See PRACTICE—COSTS. 5.

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